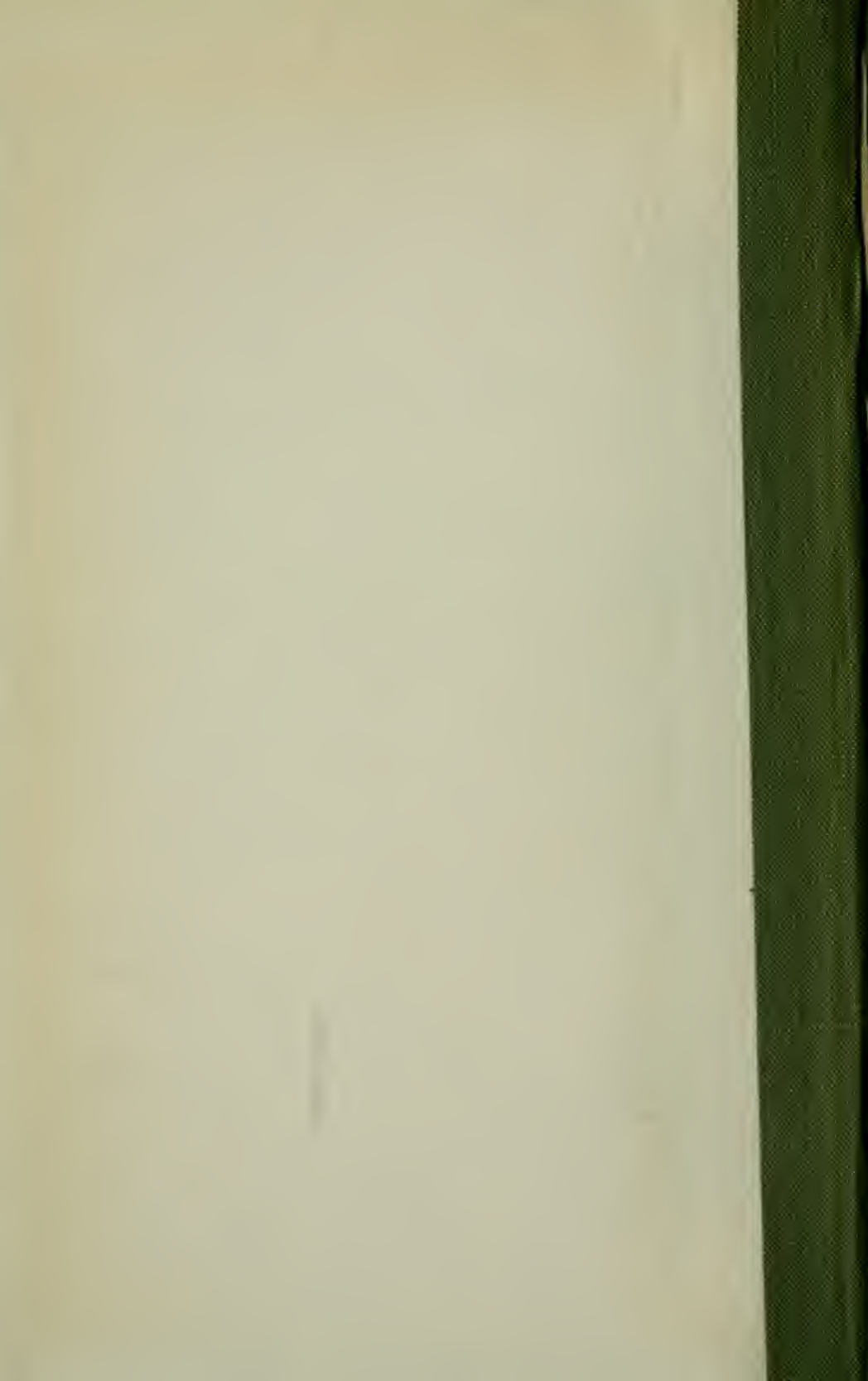
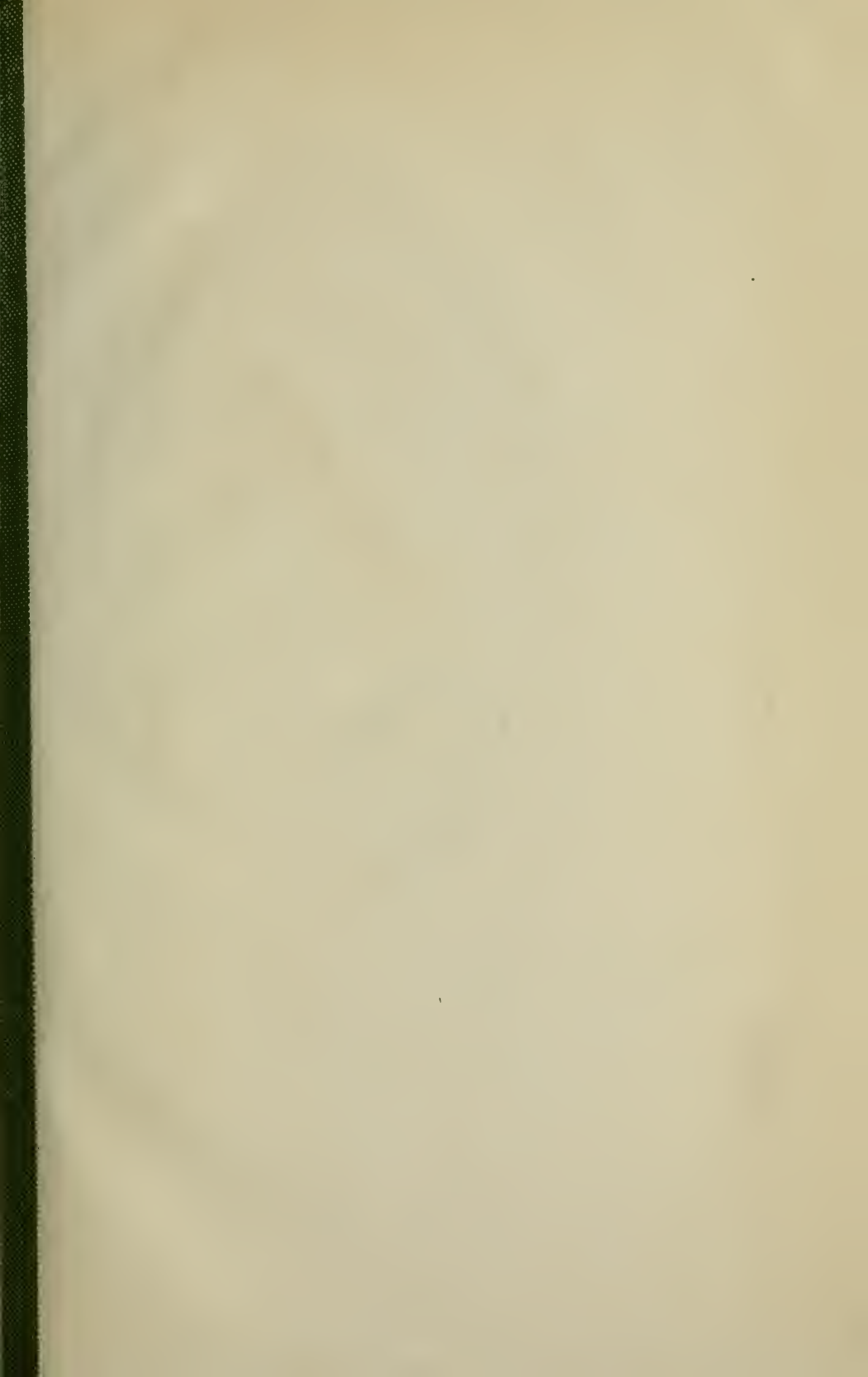


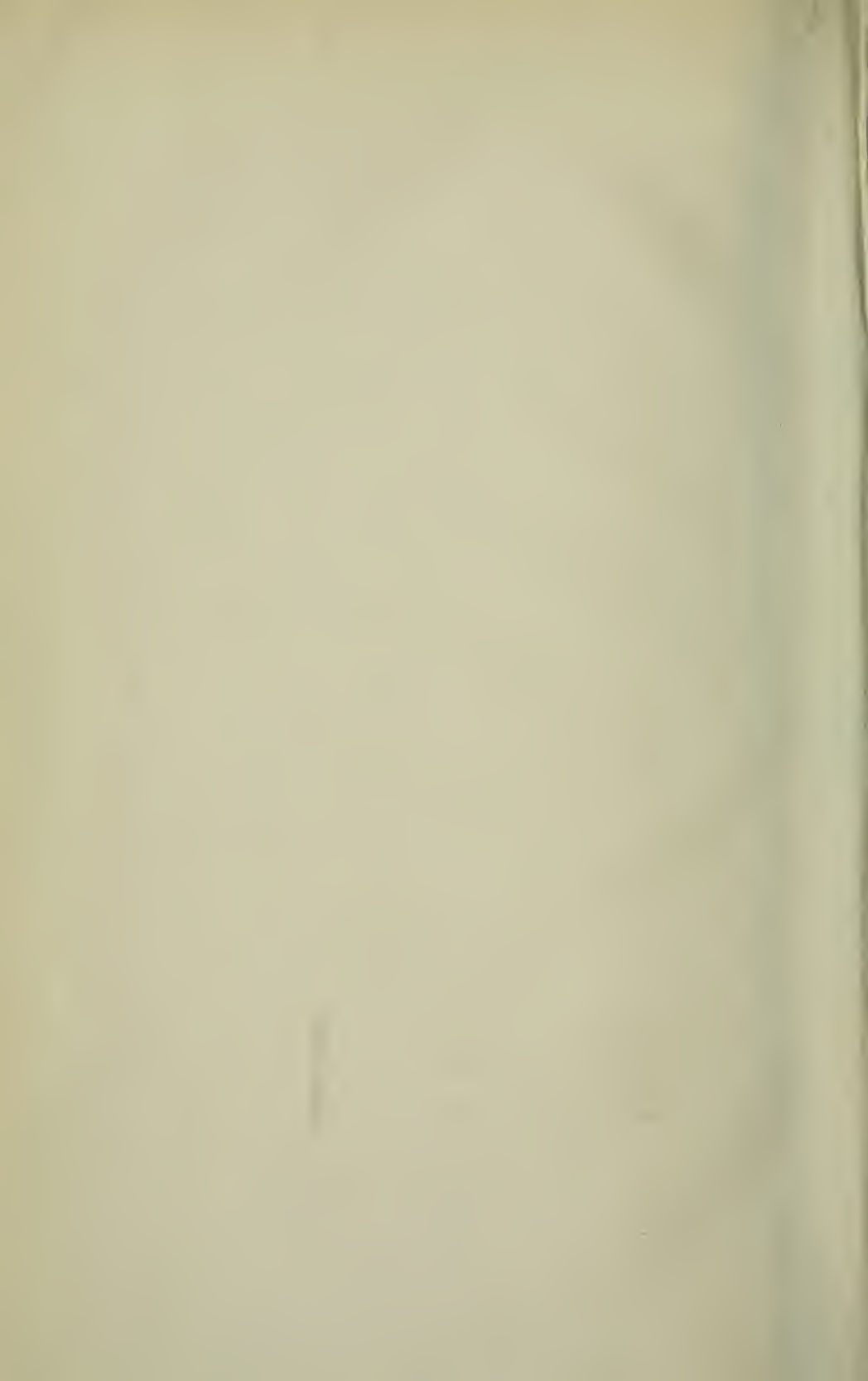


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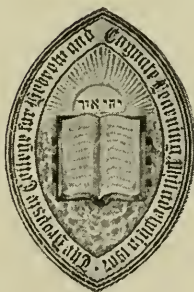
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A NEW RESPONSUM OF MAIMONIDES CONCERNING THE REPETITION OF THE *SHMONEH ESREH*

BY ISRAEL FRIEDLAENDER, Jewish Theological
Seminary of America.

IN one of his responsa R. David Ibn Abī Zimra (died 1573) refers to two Arabic responsa of Maimonides dealing with the repetition of the *Shmoneh Esreh*, and quotes the concluding portions in Hebrew.¹ One of these responsa was published by Geiger in his *Melo Hofnaim*.² The other is found in a manuscript collection of Maimonides's responsa in the Bodleian.³ Among the manuscripts of the late Steinschneider, which together with his books are now in the possession of the Jewish Theological Seminary, Professor Alexander Marx found and kindly placed at my disposal a traced copy of this responsum which the indefatigable master had prepared after the Bodleian MS. and intended to publish as far back as 1852.⁴ The identity of this responsum with the second one quoted by Ibn Abī Zimra⁵ is evident from the literal correspondence of the Hebrew quotation with the respective portion of the original. While closely related in its subject-matter to the other responsum quoted by the same author and published by

¹ ש"ת רדב"ן, ed. Leghorn, no. 94. A summary of the same responsum of Maimonides, *ibid.*, no. 5. A third responsum of Maimonides on the same subject (= *Kobez*, ed. Lichtenstein, no. 145) is briefly referred to, *ibid.*, fol. 32a, column a.

² Hebrew part, pp. 70 ff., edited from a copy of Joseph Derenbourg.

³ Catal. Neubauer, no. 814 b, 11, fol. 17 b.

⁴ Comp. Cat. Bodl., 1909, no. 123.

⁵ ש"ת, fol. 31 b, col. 1.

Geiger, it is yet different from it and offers many an interesting point.

In the following I shall first give a summary both of the anonymous question, which is extremely diffuse and written in very poor Arabic, and of Maimonides's reply which is characteristically lucid and concise. I shall then reproduce the Arabic text which is very faulty and, as the notes indicate, had to be corrected in a number of places. The Arabic text is accompanied by a Hebrew translation in which I have for the last few lines utilized Ibn Abi Zimra's quotation.

The questioner, who had once come into personal contact with Maimonides, complains about a recently introduced custom in his community, according to which the *Hazzan* recites the *Shmoneh Esreh* aloud no less than twice: the first time without the *Kedusha* and the priestly benediction, so as to enable the uneducated to recite the prayers after him, the second time with the *Kedusha* and the priestly benediction. This innovation had been introduced by one of the *Hazzanim*, and the common people liked it so well that from now on they insisted that all other readers should do likewise, although the latter found this double recitation with a loud voice very inconvenient.

A scholar who had arrived in their midst—from the reply we learn that he had come from a Christian country—suggested, instead, that the *Hazzan* should recite the *Shmoneh Esreh* but once, and this with a loud voice, thus dispensing altogether with the silent recitation. It was his opinion which he partly based on a Gaonic responsum, that the *Hazzan*, having once recited the *Shmoneh Esreh*, though it be without the *Kedusha* and the priestly bene-

diction, was, according to law, not allowed to recite it a second time. This opinion was substantiated by some other, evidently native, scholars, one of whom referred to the fact that the silent recitation was unnecessary, for the reason that it had originally been introduced solely for the benefit of the penitent,⁶ while another scholar argued that the loud recitation which included the *Kedusha* was indispensable because, in his opinion, it was intended to enable the *Hazzan* to say his own prayers, but, having once recited the *Shmoneh Esreh*, although without the *Kedusha*, he thereby forfeited the right to repeat it, as no prayer, particularly the *Musaf*, can be recited a second time, unless its contents be changed.⁷ They consequently proposed, as the foreign scholar had done, the same arrangement of one loud recitation, including the *Kedusha* and the priestly benediction, and the abolition of the silent recitation altogether.

As a matter of fact, one of the *Hazzanim* had followed this custom on certain occasions, particularly on Saturdays and holidays, when the service was unduly prolonged, or in the case of the *Minḥah* service at dusk when the time was short.⁸ But the common people complained about it because they preferred to have two loud recitations. The learned, on the other hand, were equally dissatisfied because the loud recitation of the *Hazzan* interfered with their private devotion for which the silent recitation afforded the only opportunity.

The writer had once personally heard Maimonides's opinion on this subject but he no more remembered exactly what that opinion was.

⁶ Who wish to pray for forgiveness without being overheard, comp. b. *Soṭah* 32 b.

⁷ Comp. b. *Berakot* 21 a and *Yad*, *Hilkot Tefillah*, I, 9.

⁸ Comp. Maimonides's responsum *Melo Ḥofnaim*, p. 74, l. 7 from below.

In his reply, Maimonides, true to his systematic trend of mind, begins by stating the law. The Talmud requires a double recitation of the *Shmoneh Esreh*, the first silent recitation on the part of the whole congregation so that all who can read, including the *Hazzan* himself, can fulfil their duty, and the second loud recitation by the *Hazzan* to enable those who cannot read to recite the prayers after him. The divergent opinion of Rabban Gamaliel, who assigns a different motive to the institution of the silent recitation,⁹ does not touch this particular principle, according to which every one who can read is obliged to recite his prayers for himself.¹⁰

As for the recent custom of a double loud recitation, it is not only a waste of time but also in contradiction with the Talmud which regards the practice of raising one's voice in private devotion as a sign of ignorance.¹¹

Regarding the opinion of the foreign scholar who suggested the abolition of the silent recitation, Maimonides informs the questioner that he had seen what that scholar—who, by the way, came from a Christian country¹²—had written to R. Nissim and R. Shemariah and, while he agreed fully with his opinion, he by no means approved of his argumentation. For the proofs cited by this scholar to the effect that the silent recitation is altogether inadmissible are extremely weak and untenable.

Yet, while required by law, the silent recitation ought nevertheless to be abolished on entirely different grounds.

⁹ b. Rosh hashanah 34 b. According to R. Gamaliel the silent recitation is intended to enable the reader to prepare himself for the loud recitation. See the discussion of R. Gamaliel's opinion in the other responsum of Maimonides, *Melo Hofnaim*, pp. 70 ff.

¹⁰ Comp. *Yad, Hilkot Tefillah*, VIII, 9.

¹¹ Comp. b. Berakot 24 b; comp. *Yad, loc.cit.*, V, 9.

¹² מן אלבלאר (בלאר) אחרים. Rome might mean Byzantium, although it is often used in the larger sense of Christian.

For experience has shown—and here Maimonides substantially repeats what we know from the responsum published by Geiger—that those who can read, having, during the silent recitation, read their prayers for themselves and thus, according to the law, fulfilled their duty, become during the loud recitation extremely restless, talk to one another and behave altogether indecorously. Those, again, who cannot read, inferring from the attitude of the educated, that the loud recitation is of no importance, behave likewise and even leave the synagogue, so that the very purpose for which the loud recitation was instituted, i.e. to enable the uneducated to repeat the prayers after the *Hazzan*, is defeated. Hence the abolition of the silent recitation has become a necessity. There being only one recitation—that of the *Hazzan* with a loud voice—the educated will during that time say their prayers silently, while the uneducated will listen attentively and the whole service will be orderly and impressive.¹³ This arrangement will not only be a saving of time but will also remove the *Hillul Hashem* which consists in the fact that the non-Jews—Maimonides has particularly in mind the Mohammedans whose services are characterized by almost military order and precision—make fun of the Jews who spit, hawk, and talk during their prayers. The abolition of the silent recitation is, therefore, imperatively demanded by the particular conditions of the times.¹⁴

¹³ Ibn Abī Zimra in his summary of this responsum (טו"ת רר"ז, no. 5) similarly interprets Maimonides's attitude מכל מקום בארצות הישמעאלים שמקפידין הרבה שלא להפסיק ולא לרוק ולא לדבר בתוך תפלתם.

¹⁴ In his other responsum, *Melo Hofnaim*, p. 74, l. 18, Maimonides speaks more pointedly of 'these times and these places'.—I should like to observe in passing that in the above responsum the verb כתב and the noun כתבה, which occur a number of times (pp. 72, ll. 14, 21, 25; 74, l. 4; 76, ll. 5, 9), are to be read רתב and רתבה.

HEBREW TRANSLATION

י"א שאלה בדבר המנהג שהתחילו החונים לנהוג עתה
 והיא הסדרת התפלה (ר"ל) בזמן שיתפלל הצבור בלחש יסדיר להם החון את התפלה
 בשבתות וימים טובים מן ד' שפתי
 תפתח עד יהיו לרצון בלא קדושה
 וברכת כהנים רק על דרך ההקראה (ר"ל)
 שיקריאם הלחש, ואח"כ יסדיר התפלה
 מן ברוך אתה כמו שרגיל השליח צבור בצבור ויאמר בה קדושה וברכת
 כהנים. וזה המנהג שיקריא החון את הלחש
 מן ד' שפתי עד סופו הוא מנהג שנתחדש
 מקרוב, הנחיג אותו אחד החונים
 ומצא חן בעיני ההמון והתחילו לדרוש זה
 מיד כל חון וזה יקשה על החון
 (ר"ל) שמטריחים אותו בעת הלחש שיתפלל בקול רם
 כמו שיחזור ויתפלל שנית בקדושה, וכשבא תלמיד
 חכם אחד הציע שתחת חיותו מסדיר התפלה
 בלא קדושה ואח"כ חוזר ומסדיר שנית בקדושה
 יסדיר (החון) פעם אחת בקדושה ותהיה
 ההסדרה הזאת תפלתו ויוציא בה את מי שאינו בקי ולא
 יטריחו אותו שתי פעמים. אח"כ אמר ג"כ שמי שעשה
 ההסדרה הזאת בלא קדושה ותקריא את הקהל
 איננו רשאי לחזור להסדיר בקדושה. וזכר בתוך
 דבריו שיש בזה תשובה לגאון
 ותלמידי חכמים אחדים נתנו חווק לזה באמרם שהתפלה
 אמנם נתקנה בלחש מפני תקנת השבים ואמר אחר

¹⁵ Composite Hebrew words are regarded as defined, without the definite article. Comp. a similar example in my *Selections from the Arabic Writings of Maimonides*, p. 41, note c.

¹⁶ Read צותה.

ARABIC TEXT

י"א מכאלה פי הרא אלמר אלדי צארו אליום ימתתלוה אלחונים
 והו אסדאר אלצללה וקת אן יצלי אלציבור אללחש יסדר להם אלחון אלצללה
 פי אלשבתות וימים טובים מן יי שפתי
 תפתח אלי יהיו לרצון בניר קדושה
 ולא ברכת כהנים בל עלי סביל אלתלקין באנה
 ילקנחם אללחש ובעד דלך ירנע יסדר אלצללה
 מן ברוך אתה כמא אלעאדה לשליח ציבור¹⁵ פי אלציבור ויקול פיהא אלקדושה וברכת
 כהנים והרא אלמנהג אלדי ילקן אלחון אללחש
 מן יי שפתי אלי אלאכר אנמא הו אמר האדת
 מן קריב כאן קד אמתתלה בעיץ אלחונים
 פחסן ענד אלגמהור פצארו יטלבו בה
 כל חון פצאר דלך יתקל עלי אלחון
 אן יתכלף ענד אללחש אן יצלי באעלאן צותהם¹⁶
 * ירנע כמא הו יעיד¹⁷ אלצללה באלקדושה פלמא חצר בעיץ תלמיד
 חכמי אטאר באן יבון בדל מא יסדר אלצללה
 בניר קדושה תם ירנע יסדר תאניא בקדושה
 יסדר דפעה ואחדה באלקדושה פיכון
 דלך אלאסדאר הו תפלתו ויוציא בה מי שאינו בקי ולא
 יתכלף מרתין תם אנה איצא קאל אן אלדי יפעל
 דלך אלאצדאר¹⁸ בניר קדושה וילקן אלגמאעה
 לא יגוז לה ירנע יסדר באלקדושה, ודכר פי
 בעיץ כלאמה אן פי דלך תשובה לגאון
 ובעיץ תלמיד חכמי אסנר דלך בקולחם¹⁹ אן אלתפלה
 אנמא געלת בלחש מפני תקנת השבים ובעיץ קאל

¹⁷ The text is no doubt corrupt. Read perhaps יעיד כמא הו ירנע.

¹⁸ Read אלאסדאר = אלאצדאר.

¹⁹ The suffix shows that בעיץ is plural.

HEBREW TRANSLATION

שואת ההסדרה בקדושה היא לתפלתו
של שליח צבור ובה יוציא את מי שאינו בקי
ואם סמך על ההסדרה הראשונה שהקריא
(בה) את הצבור בלא קדושה שכבר יצא בה ידי חובתו
(או) אסור לו לחזור ולהסדיר בקדושה שנית מפני
שאו תהיה התפלה שתיים שאיננה מותרת אלא אם חדש
בה דבר וביחוד תפלת מוסף שאסור להתפלל אותה
שתי פעמים. והיותר נכון הוא שיסדיר בקדושה פעם אחת
ויוציא עצמו ומי שאינו בקי בשעה אחת, זהו הראוי
לעשות. וכבר סמך אחד החזנים על זה שיסדיר כל
תפלה, שירצה ההמון שיסדירה, פעם אחת
בקדושה ולא יעשה זאת אלא בשעת הרחק
או לפרקים בכל שבתות או ימים טובים
כשתארך הישיבה בבית הכנסת עד שעה מאוחרת ביום
או זמן בין השמשות והיה זה רע בעיני קצת ההמון
מפני שלא ירצו אלא זה המנהג שנתחדש והוא
שיסדיר ההקראה בלא קדושה ואח"כ יחזור
ויתפלל שנית בקדושה, ועל האנשים הבקיאם
תכבר הסדרת הלחש ע"י החזן
העושה אותה בלא קדושה מפני שהם רוצים להתפלל
לחש לעצמם וכשמגביה החזן את קולו בזאת
ההסדרה כדי להקריא (את הקהל) יטעו ותטרף
רעתם ותשתבש תפלתם וכזה יארע להם גם כן
כשיסדיר פעם אחת בקדושה ואינם יכולים להתפלל בלחש
אלא כשיתפללו עמו מלה במלה ויענו קדושה

²⁰ מרתין Read.

²¹ בל אלמן read באלמן = באלן. ²¹ ל is struck out.

²² MS. suggests rather אלמבת, but the מ is not quite certain. The context demands אלבת = اللبث.

ARABIC TEXT

אן הדא אלאעדאר באלקדושה הו לתפלתו
 של שליח ציבור ובה יוציא את מי שאינו בקי
 ואן עול עלי אלאעדאר אלאול אלדי ילקן
 אלציבור בגיר קדושה אנה קצא בה אלפרץ
 חרם עליה אן ירנע יעיד באסדאר קדושה אר
 תכון תפלה שתים אלדי לא חגזו אלא אם חרש
 בה דבר ובאלכאץ תפלת מוסף אלדי לא יגזו תצלא
 ברתין²⁰ ואלאעלה אן יצדר באלקדושה דפעה ואחדה
 ויוציא עצמו ומי שאינו בקי בל²¹ אלאן הדא אלואגב
 אן יעמל פאעתמד בעץ אלחזנים עלי דלך אן יסדר כל
 צלאה ירידוא אלגמחור אצדארהא דפעה ואחדה
 באלקדושה ולא יפעל דלך אלא פי וקת דוחק
 או לפרקים פי כל שבת או ימים טובים
 אדא טאל אללבת²² פי אלכנים לוקת כביר פי אלנהאר
 או וקת חפו פשק דלך עלי בעץ אלגמחור
 אד לא ירידו אלא דלך אלמנהג אלמחדת והו
 אן יצדר תלקין בגיר קדושה תם ירנע
 יעיר אלצלאה באלקדושה ואלאשכאין אלבקיאים
 יצעב עליהם אצדאר אלחזן אללחש
 אלדי יפעלה בגיר קדושה אד ירידון הם יצלון
 לחש לאנפסהם פבאעלאן אלחזן ברלך
 אלאעדאר אלתלקין²³ יתגלטו ותכתלט
 אדהאנהם ותתשוש צלאתהם וכדלך איצא יגילהם²⁴
 אדא אצדר דפעה ואחדה בקדושה לא יטיקו הם יצלו בלחש
 אלא אן צלאו²⁵ מפה²⁶ כלמה בכלמה ויסתניבו אלקדושה

²³ Read probably לתלקין = لتلقين.²⁴ Read להם יגי.²⁵ Read צלוא.²⁶ Read מעה.

HEBREW TRANSLATION

ביחד עם מי שאינו בקי ואינם חולקים(?) על שליח צבור
 בזה, אם זה מותר להם לעשות שיהיו הם אומרים
 בלחש כל מה שיאמר הש"צ בתפלה כל
 מלה (ומלה) מדבריו ולא תשתבש תפלתם.
 ואחרים אמרו שזהו מנהג פשוט שיתפלל בלחש
 ואח"כ יסדיר בקדושה ומה שתלוי
 בלחש הוא שיקריא את הבקי בלבר ואמנם
 יזכיר אותו במקום ששנה פעמים מספר
 ומי שאינו בקי סומך על ההסדרה השנית. ויש
 מי שחושב שהראוי הוא שתהיה רק הסדרה אחת בקדושה
 ומי שהוא בקי מן הצבור יאמר
 עמו בלחש מלה במלה ומי שאינו בקי
 יענה אמן ויצא ידי חובתו על כל
 ברכה וברכה, וכבר שמע עבדו ממנו
 בזה הענין איזה דבר מ(זמן) שלמד אצלו
 ועמד לפניו אבל זכרונו איננו מדויק. בחדו
 ייטיב נא להודיעו את דעתו ואיזה הוא הראוי.
 זה או המנהג הפשוט שיתפלל בלחש
 ואח"כ יסדיר בקדושה ואם המנהג
 שנתחדש שיקריא החזן את הלחש ואח"כ יחזור
 ויסדיר התפלה בקדושה מותר או לא? תורנו
 תורתה הקדושה כפי חכמתה המופלאה ושכרה כפול מן השמים

התשובה הראוי שצריך לסמוך עליו הוא
 מא שתקנו החכמים ז"ל והוא שיתפללו הכל
 בלחש ויצא ידי חובתו כל מי שהתפלל אין הבדל בין
 הש"צ או זולתו מן הקהל ואח"כ

²⁷ The text is rather obscure. Perhaps it is faulty spelling for יכלפו = יכלפו: they do not trouble the reader (with the repetition of the prayer).

ARABIC TEXT

מע מי שאינו בקי ולא יכאלפו²⁷ שלח ציבור
 פי דלך הל דלך סאיג לחם אן יפעלוה פיכוננו הם יקולו
 בלחש כל מא יקול שלח ציבור פי צלאה פי כל
 כלמה מן כלאמה *אלא ותחשוש²⁸ צלאתהם
 וקום אכר קאלו אן הדא מנהג פשוט אן יצלי בלחש
 ובעד דלך יסדר בקדושה והדא אלדי יעלק
 פי אללחש אנמא הו אלדי ילקן מן יערף פקט ולכנה
 ידכרהמא²⁹ סהא עדה³⁰
 ואלאעתמאד עלי אלאצדאר אלתאני למי שאינו בקי ותם
 מן ראי אלואגב באן אנמא יכון אצדאר ואחד באלקדושה
 ואלציבור אלדי יכון בקי מנהם יקול
 בלחש מעה כלמה בכלמה ומי שאינו בקי
 יסתניב אמן ויוציא ידי חובתו עלי כל
 ברכה וברכה וקד כאן ממלוכהא סמע מנהא
 פי הדא אלמעני שי ומן מטאלעתה אמאמהא
 ומתולה בין ידיהא ולא יחק דכרה בפצלחהא
 תנעם בתעלימהמא³¹ ענדהא ואימא הו אלואגב
 הדא או אלמנהג אלפשוט אלדי יצלי לחש
 ובעד דלך אצדאר³² באלקדושה והל אלמנהג
 אלדי אהדת אן ילקן אלחזן אללחש ובעד דלך ירגע
 יצדר אלצלחה באלקדושה סאיג אם לא תורינו
 תורתה הקדושה כפי חכמתה המופלאה ושכרה כפול מן השמים

אלגואב אלואגב אלדי ינבגי אעתמאדה הו
 מא רתבת אלחכמים ז"ל והו אן יצלי אלכל
 בלחש ויצא ידי חובתו כל מן צלא לא * בין פרק³³
 שלח ציבור או גירה מן אלגמאעה ובעד דלך

²⁸ Read probably ולא תחשוש.²⁹ Read מא ידכרה.³⁰ = عده.³¹ Read בתעלימה מא.³² Read יצדר ?³³ Read בין פרק.

HEBREW TRANSLATION

יחזור הש"צ ויתפלל בקול רם בקדושה כדי
 להוציא את מי שאינו בקי. זוהי רעת
 החכמים והיא ההלכה ולא יחלוק רבן נמליאל
 בזאת התקנה שכך התקינו אותה וכך
 הוא ראוי לעשות אבל רבן נמליאל חולק
 בדבר אחר והוא שהוא חושב ששורש תקנת תפלת
 לחש הוא כדי לסדר ש"צ תפלתו בלבד
 ובעת שהוא מנבין קולו בתפלה בתפלתו אשר³⁵
 יצא בה ידי חובתו הוא וכל מי שרוצה
 לסמוך על תפלתו בין בקי בין שאינו בקי
 ואינה הלכה פי שאר ימות היטנה רק כל
 בקי אינו יוצא ידי חובתו אלא בתפלת עצמו.
 אבל זה המנהג אשר זכרת מהסדרת
 התפלה שתי פעמים בקול רם הוא אבוד זמן
 לחוד לדברי הכל ובלבול גדול לכל מי שהוא
 בקי ויהיה הוא משמיע קולו בתפלתו וזה מעשה
 שטות בלא ספק אבל רבים יתפללו פעם אחת בקדושה
 בלבד והוא היותר טוב והיותר נאות. ומה ששמעתם
 מאחד החכמים מארצות אדום שכך הוא ראוי בהכרח
 ר"ל שיתפלל הש"צ פעם אחת בקול רם
 וקדושה ושלא יהיה שם לחש כלל אני אומר
 בזה הלכתא כותיה ולאו מטעמיה מפני
 שראיתי דבריו ביד ר' נסים ור' שמריה
 שמרם צורם והם כלם דברים שיש בהם שניאות רבות
 ומתנגדים להעיון שהוא חושב שאיננו מותר שתהיה
 שם תפלה בלחש כלל והביא ראיות חלושות
 ומשובשות מאוד ולכן הנני אומר שכך ראוי⁴⁰ בזמננו

³⁴ Read אן.³⁵ See the Arabic text.³⁶ Here seems to be a lacuna. יצא begins the apodosis.³⁷ Read קולו.³⁸ Read פקט.³⁹ Read בלאד.

ARABIC TEXT

ירגע שליח ציבור ויצלי באעלאן בקדושה כרי
 להוציא את מי שאינו בקי והדא הו מדהב
 אלחכמים והו אלחלכה ולא יכאלף רבן גמליאל פי הדא אלתבה אנהא הכדא רתבת והכדא
 ואנב אן יפעל ואנמא יכאלף רבן גמליאל פי
 שי אבר והו אנה יעתקד מן³⁴ אצל תרתיב צלאה
 אלחש כדי לסדר שליח ציבור תפלתו לא ניר
 ואנה ענד מא יעלן באלצלאה פי צלאהה אלת³⁶
 יצא בה ידי חובתו הו וכל מן אראד אן
 יעתמד עלי צלאהה בין בקי בין שאינו בקי
 ואינה הלכה פי שאר ימות השנה כל כל
 בקי אינו יוצא ידי חובתו אלא בתפלת עצמו
 ואמא הדא אלמנהנ אלדי דכרת מן אצדאר
 אלצלאה שתי פעמים באעלאן פהו בטי
 מחין לדברי הכל ותשויש עטים עלי כל מן הו
 בקי ויציר הוא משמייע ולו³⁷ בתפלתו והו פעל
 נהל בלא שך ואמא כתיר יצלי מרה ואחדה בקדושה
 פקי³⁸ פהו אלאגור ואלאחסני ואלדי סמעם
 ען בעין עלמא אלבלאד³⁹ אלוס אנה הכדא יגב צרורה
 יעני אן יצלי שליח ציבור מרה ואחדה באעלאן
 וקדושה ולם יכון תם לחש בונה פאני אקול
 פי דלך הלכתא כותיה ולאו מטעמיה לאני
 ראית כלאמה ביד ר' נסים ור' שמריה
 ש"צ והו בלה כלאם פיה זלל כתיר
 ינקין נטר באנה יטן אנה לא יגזו אן תכון
 תם צלאה בלחש גמלה ונאב דלאיל צעיפה
 מבתלה גרא ולכני אקול אנה כדלך יסתחב פי זמאנא
 מן אנל עלה אבינהא תלך אן ענד מא יצלי שליח ציבור

⁴⁰ Beginning with this word I have followed Ibn Abī Zimra's translation, except for a few slight alterations.

HEBREW TRANSLATION

* מפני סבה שאבארה והיא שכשיחזור ⁴¹ ש"צ
 להתפלל בקול רם כל מי שהתפלל ויצא ידי חובתו
 יהפוך פניו לספר עם חברו או לשיהיה בטלה ויחזור
 פניו מהמזרח וירוק ויסיר ביחו וניעו וכשיראה זה ⁴³
 חבירו שאינו בקי יעשה גם הוא כן בלי ספק ויחשוב שזה
 שאומר ש"צ אין לסמוך עליו ואם כן יצא ⁴⁴
 כל מי שאינו בקי והוא לא יצא ידי חובתו ותתבטל
 הכונה אשר בעבודה חוזר ש"צ התפלה שהוא
 להוציא את שאינו בקי ואמנם כשלא יתפללו הקהל
 בלחש כלל אלא יתפללו הכל אחר ש"צ תפלה
 אחת בקדושה כל מי שיודע להתפלל יתפלל עמו
 בלחש והבלתי בקיאים ישמעו ויכרעו כולם עם ש"צ
 ופני כל העם אל ההיכל בכונה ויצאו כולם
 ידי חובתם ויהיה הדבר הולך על נכון
 ויושר * ותמנע אריכות החזרה ⁴⁵ ויוסר
 חלול השם שנתפשט בין הנכרים שהיהודים
 רוקקים וכחים ומספרים בתוך תפלתם
 שהרי הם רואים זה תמיד ⁴⁶ וזה
 היותר נכון ⁴⁷ אצלי באלו הזמנים מצד הסבות
 שזכרתי וכתב משה

⁴¹ Ibn Abī Zimra has instead לפי בקול רם לפי ש"צ, summing up the matter under discussion.

⁴² Read לחדיית = לחדיית.

⁴³ I. A. Z. אותו.

⁴⁴ I. A. Z. adds מבית הכנסת.

⁴⁵ דָּבַר = דָּבַר, 'to repeat'. Manuscript has יָדָבַר which perhaps suggests that it is a Hebrew word: יָדָבַר, *sail*, התבה.

ARABIC TEXT

באעלאן ינקלב כל מן צלי ויצא ידי חובתו
 אמא אלהית⁴² או להריאן ויקלב
 ונהה מן אלקבלה ויבזק וימכט פאדא ראי דלך
 אלשבין אלדי אינו בקי יפעל הו איצא כדלך בלא שך ויטן אן הרא
 אלדי יקולה שליה ציבור לא יעתמד עליה ויכרן
 כל מן הו גיר בקי והוא לא יצא ידי חובתו ויבטל
 אלקצר אלדי מן אגלה ירד⁴⁵ שליה ציבור אלדי הוא⁴⁶
 להוציא את שאינו בקי פאדא כאן אלנאם לא יצלא
 לחש בונה בל יצלי אלכל אחר שליה ציבור צלאה
 ואחרה בקדושה כל עארף יצלי מעה
 בלחש וכל גיר עארף יכמע וירכע אלכל מעה
 והעם⁴⁷ מסתקבלון אלקבלה בכונה פיוכנו אלכל
 קד יצאו ידי חובתן ויגרי אלאמר עלי נטאם
 ואסתקאמה וידהב טול אלתכראר וירתפע
 חלול השם אלדי הצל ענד אלגוים באן אליהוד
 יבזקוא וימכטוא ויתחדתוא פי טי צלאתהם
 לאן אלאמר כרא ישאהדונה והכרא הו
 אלאולי ענדי פי הדה אלאזמנה מן אלאסבאב אלתי דכרנאהא וכת מיש ז"ל⁵¹

⁴⁶ Read הו.⁴⁷ Probably to be read והם, although Ibn Abī Zimra seems to have had a similar reading.⁴⁸ I. A. Z. somewhat freely טורח האריכות.⁴⁹ I. A. Z. adds ומעירים עליו which is a double translation of ישאהדונה.⁵⁰ I. A. Z. adds וראוי.⁵¹ Omit ו"ל which was added by the copyist.



THE LAST TWO CHAPTERS OF
SAMUEL BEN ḤOFNI'S

כתאב אחכאם שרע אלציות

BY ISAAC HERZOG, Paris.

I

SAMUEL BEN ḤOFNI GAON, head of the academy of Sora (died 1034), is undoubtedly one of the most remarkable personalities of the gaonic school. Like his famous predecessor Saadya, Samuel b. Ḥofni was at once an eminent Talmudic authority, a philosophical thinker, and a Biblical exegete. A philosopher of less originality and an exegete of a lower order than the sage of Fayum, he none the less possesses sufficient interest to deserve close study.

While the philosophical and exegetical sides of Samuel's literary activity have received considerable attention, its halakic aspect has been wellnigh neglected. The fact does not stand alone. It may be taken as exemplifying the comparative neglect into which has fallen the Halakah—that department of Jewish learning which more than any other is justly entitled to be called Jewish science (חכמת ישראל). To confine ourselves to the present instance. It was certainly not so much on account of his philosophical culture as on that of his mastery of the Halakah that Samuel b. Ḥofni occupied the gaonic chair at the Academy of Sora. In his case, however, the paucity of the material available might perhaps be urged as an excuse.

Dr. I. Israelsohn, who had rendered a real service to Jewish literature by his excellent edition of Samuel's *Commentary on the Pentateuch*, recently made an effort in the direction of drawing from obscurity what remains of the Gaon's halakic writings.

In the *Hakadem* of September, 1909, Dr. Israelsohn published from a unique manuscript at the St. Petersburg Library the tenth or last chapter of Samuel ben Ḥofni's treatise on *ṣiṣit* שרע אלהים כתאב אלהים.

The reason for singling out that particular chapter is given by Dr. Israelsohn in the following words which I may be permitted to quote :

‘Unter den 7 erhaltenen Capiteln ist es besonders das letzte, welches unsere Aufmerksamkeit fesselt — nicht so sehr durch seinen Inhalt als durch eine merkwürdige Mischna-Variante die es bietet. Der Autor behandelt in diesem Capitel die Frage, “ob in Ermangelung von purpur-blauen Fäden (תכלת) die Pflicht der Schaufäden wegfällt” und geht hierbei von der Mischna מנחות 4, 1 aus. Während nun in unserem Texte die Mischna את מעכבת את התכלת ואלבן ואלבן lautet . . . wird sie von unserem Autor in ihrer ersten Hälfte in diametral entgegengesetztem Sinne citirt und zwar התכלת מעכבת את הלבן. Die Möglichkeit eines Copistenfehlers in unserer Handschrift ist im gegebenen Falle vollkommen ausgeschlossen, da das Mischna-Citat, wie es in der Handschrift lautet, entsprechend in's Arabische übersetzt ist und der ganzen Discussion über die in Rede stehende Frage zu Grunde gelegt wird . . . Es bleibt nur die Voraussetzung übrig dass in dem Texte, der ihm vorgelegen, wirklich die von ihm angeführte Lesart gestanden hat. Aber auch in diesem Falle ist es sehr auffällig und befremdend dass Samuel ben Chofni, dem

doch als Gaon die Halacha in allen ihren Teilen gegenwärtig sein musste, sich von einer augenscheinlich falschen Lesart hat irreführen lassen.'

In thus qualifying as 'augenscheinlich falsch' the reading adopted by Samuel b. Ḥofni, the editor obviously means that its utter untenability becomes manifest in the course of the development of the Halakah in the Gemara. And, as a matter of fact, this is really the case, for with reference to the attempted reconciliation of the opinion of רבי with that of the משנה, the נמרא expressly says:

התניה לבן דאינה מעכבת את התכלת תכלת דאינה מעכבת את הלבן
מאי היא וכו'

thus presupposing in the Mishnah "התכלת אינה מעכבת וכו'".

Yet it is scarcely conceivable that the Gaon should have been guilty of such slackness of attention. The principal of a Rabbinical Seminary in Sora could be relied upon to exercise greater circumspection in giving an *exposé* of a *sugya*. Is it not possible that his text of the Gemara differed as much from that of our editions as that of his Mishnah? The attentive reader of the Talmud will have noticed that from the beginning of the *sugya*, מתניתין, down to התניה, just quoted, there is nothing irreconcilably conflicting with the Gaon's reading in the Mishnah.¹

¹ לימא מתניתין דלא כרבי דתניא וראיתם אותו מלמד שמעבבין זה את זה דברי רבי וחכמים אומרים אין מעבבין מ"ט דרבי דכתיב הכנף מין כנף וכתיב פתיל תכלת ואמר רחמנא עד דאיכא תרוייהו בחד ורבנן וראיתם אותו כל חד לחודא משמע לימא דלא כרבי אפילו תימא רבי לא נצרבא אלא לקדם דתניא מצוה להקדים לבן לתכלת ואם הקדים תכלת ללבן יצא אלא שחיסר מצוה מאי חיסר מצוה אילימא חיסר מצוה דלבן וקיים מצוה דתכלת לרבי עכובי מעבבי אהדרי א"ר יהודה א"ר שחיסר מצוה ועשה

וראם אהל אלתלמוד אן יחרצו קול רבי חתי יואצק קול אלמתניתין בקולחם אמר רב יהודה אמר רב אפילו תימא רבי לא צריכה ליקדם דתניא מצוה להקדים לבן לתכלת ואם הקדים תכלת ללבן יצא אילא שחיסר מצוה ובסרו קולחם אילא שחיסר מצוה וקאלו מאי חיסר מצוה אי נימא חיסר מצוה דלבן וקיים מצוה דתכלת לרבי עובדי מעבב הרדאי פתרכו הדיא אלוגה וצארו אלי וגה אחר והו אן קאלו אמר רב יהודה אמר רב חיסר מצוה נעשה מצוה ולא הוי מצוה מן המוכתר ואכרו דלך בקולחם אמר ליה לוי לשמואל לא תיתיב אכרעך עד דמפרשת לי להא מילתא התכלת אינה מעכבת את הלבן והלבן אינו מעכב את התכלת מנא לן אמר ליה לא נצרכא אלא לסרין בציצית דמצוה לאקדומי לבן ברישא ואי אקדים תכלת ברישא לית לן בה, תם קאל התינה לבן דאינו מעכב את התכלת התכלת דאינה מעכבת את הלבן וכו' (*Hakedem, loc. cit.*)

We may now, I believe, assert with a high degree of confidence that in the time of Samuel ben Ḥofni there existed a different recension of the גמרא corresponding to the *varia lectio* הלבן את התכלת מעכבת in the משנה.

That the reading of our copies is the original one will be readily conceded. The corresponding omission in the Gemara, presupposed by Samuel ben Ḥofni's treatment, must have been occasioned by the incorrect Mishnah reading, the first התינה—תכלת coming to be regarded as mere anticipatory dittography.

The Gaon registers three different opinions regarding the question of תכלת ולבן.

פנקול אן אלבלאף פימא בין אלקדמא כאן פי דלך עלי ג' צרוב, אלאול הו קול סתם משנה נעני סתם מתניתין התכלת מעכבת את הלבן והלבן אינו מעכב את התכלת ותפסיר דלך הו אן אלתכלת אדיא פקרת אוקפת וגוה אלציצית אלדי סמאה אלקדמא לבן לביאצה בל אסקטת וגוה מהמא פקרת אלתכלת, פאמא אלציצית אלתי הי לבן פאנהא אן פקרת ווגדת אלתכלת לם יסקט וגוה אלתכלת בפקר אללבן, ואלעיכוב פי אצל

אללנהּ הוּ אַללַבַּת וַאלּוּקוֹף עַן אִלְשִׁי לֵאנָה תִרְנוֹם וְלֹא יִכְלוּ לַחֲתִמָּהּ . . .
וַאלְצָרֵב אֶלְתַּאֲנִי הוּ קוֹל רַבְּנֵי הַקְדוּשָׁה אֶלְדִּי סְמוּה רַבִּי וְהוּ אֵן אֶלְתַּכְּלַת
מַחֲמָא פַקְדַּת יִסְקַט וְנוֹב אֶלְלָבֵן וּמַחֲמָא פַקְדֵּי אֶלְלָבֵן יִסְקַט וְנוֹב אֶלְתַּכְּלַת
חֵית יִקוֹל וְרֵאִיתִם אוֹתוֹ מִלְּמַד שְׁמַעֲכֵבִין זֶה אֵת זֶה דְּבַרִּי רַבִּי. וַאלְצָרֵב
אֶלְתַּאֲלַת הוּ קוֹל אֶלְנִמְעָאָהּ פִּי אֶלְבְּרֵאנִיָּהּ וְחַבְמִיִּם אוֹמְרִים אֵין מַעֲכֵבִין
וַאֲרֵאדּוּ בְּדִלֶךְ אָנָּה אִדָּא פַקְדֵּי אַחֲרֵמָא לֹם יִסְקַט וְנוֹב אֶלְאֲכֵר. (*ibid.*)

A very serious objection against his Mishnah reading is the entire absence in the Talmud of an explanation of the first opinion or the opinion of סתם מינה according to him, whereas the other two receive due treatment. The difficulty by no means escaped his notice, but he deftly made use of it for inferring the rejection by the Talmud of the סתם מינה

וּבְעַד דְּבִרְנָא לְדִלֶךְ נַעוֹד אֵלֵי תַבִּיין אֶלְהֵלְכָה פִּי אִי אֶלְאִקוּאֵל הִי פִּנְקוֹל
אֵן אֶלְהֵלְכָה הִי בְּקוֹל אֶלְחַבְמִיִּם אֶלְדִּי רוּוָה פִּי אֶלְבְּרֵאנִיָּהּ וְלִים אֶלְהֵלְכָה פִּי
דִּלֶךְ כִּסְתָם מַתְנִיתִין וַאֲלִרִי יִדֵּל עָלֵי צַהָה דִּלֶךְ הוּ אֵן אֶהֱל אֶלְתַּלְמוּד כְּאִצּוּ
פִּי דְּכֵר וְזֶה אֶלְמַתְנִיתִין אֶלְבְּרֵאנִיָּהּ וְחַבְלָמוּ עָלֵי צַהֲתָהּ וְתִרְכּוּ אֶלְכְּלָאִם
עָלֵי סַתָּם מִיִּנְהּ . . . (*ibid.*)

I shall have occasion to deal more fully with this point in a subsequent article, when I hope to discuss the place of Samuel ben Ḥofni as an halakist.

II

The ninth chapter though not of such importance for the history of the Talmudic text as the tenth or last, nevertheless offers some interesting points. My interest in it was aroused while studying הלכות ציצית in Maimonides's Code. In giving a description of the הלזון or species of mollusk used for the dyeing of תכלת, Maimonides states²

² In the *Jewish Encyclopædia*, s. v. Fringes, Maimonides is wrongly referred to as saying that the blood of the *hilazon* is red.

דמו שחור כדיו. This particular is not traceable to any known Talmudic or Midrashic source. We could speak with greater confidence if we had at our disposal the now lost ירושלמי קדשים. Did the great codifier identify the חלזון של תכלת with *sepia officinalis*, which secretes a black fluid? Cf. Lewysohn, *Zoologie des Talmuds*, § 369. I should rather think we have here a combination of Talmudic and Aristotelian authority. Aristotle in speaking of the purple-producing mollusca supplies the following information:

Εἰσὶ δὲ τῶν πορφυρῶν γένη πλείω . . . καὶ τὸ ἄνθος αὐτῶν αἱ μὲν πλείσται μέλαν ἔχουσιν, ἔνιαι δ' ἐρυθρὸν καὶ μικρόν, κτλ.

(*Hist. Anim.* v. 15. 4.)

Maimonides, conceiving the *tekelet* colour as a deep dark blue ("הלכות ציצית, פרק ב", *passim*), was probably led to identify the חלזון של תכלת with that class of marine snails which, according to Aristotle, furnish a black dye, and so added this further mark of identification to the description given in the Talmud (Menahot 44 a). There still remains one detail to be accounted for. What authority may he have had for כדיו? Aristotle gives no indication about the degree of blackness. In this connexion it is worth noting that the Greek word μέλαν also denotes 'ink'. May not the Arabic version, bent upon reproducing this shade of meaning, have rendered μέλαν by 'ink-black'? Aristotle in all probability was accessible to Maimonides only through the medium of the Arabic. My efforts to discover the Arabic translation of the passage in question have hitherto proved fruitless. In the manuscript copy extant at the British Museum, the only one I know of, the fifth book of the History of the Animals, so Dr. Barnett informed me, is totally missing.

Samuel b. Ḥofni's treatise on ציצית appearing to me

likely to throw light on this obscure point, I applied to the Director of the Imperial Public Library at St. Petersburg for a transcript of the chapter on תכלת. Thanks to the courtesy of His Excellency and to the kind offices of Dr. I. Markon I have been placed in possession of a copy. My expectation has not indeed proved true, but the chapter as already remarked is by no means devoid of interest.

TEXT

ואלפצל אלחעסא

אלקול פי צפה אל תכלת

פנקול אן תעלי קאל ונתנו על ציצית הכנף פתיל תכלת³ וגאנה אל
כבר באנה כאן יצבנז בדם חיואן מאוי יסמי חלזון מע אבלאט אכר⁴ ופי
דלך קאלו חלזון זה גופו דומה לים⁵ בריתו דומה לדג ועולה אחד לשבעים

³ Num. 15. 37.

⁴ Cf. וסממנים 42 b, caption תוספות מנחות :

דבר תימא הוא איך מערב שום דבר בהרי תכלת ושמא עם הסממנים
נקרא תכלת ובקונטרס פירש לשרות בהן כדרך הצובעין ששורין אותו בצרף.
Cf. Rashi, *ibid.* : בייצא : בצרף שקורין בייצא :

Cf. Maimonides, "הל' ציצית פרק ב'.

⁵ This characteristic is not satisfied by any—at least Mediterranean—species of the genera *murex* and *purpura* which alone are known to have been anciently employed in purple dyeing. Lewysohn (*Zoologie des Talmuds*, § 366), identifying the תכלת של חלזון with *purpura* or *pelagia* (Pliny, 9, 36, 61; Voigt 3, p. 459), proposes the emendation גונו for גופו. The correction, besides lacking the support of any authority whatever, would really not be helpful in the least, for if in the text גונו would be the exact equivalent of גופו in this connexion, meaning nothing but 'its colour', i. e. the colour of the animal or of its shell; the dye-secretion is termed דם in this very passage. Khout's attempted solution ascribes to גופו a meaning which it simply cannot be made to bear. גופו כלומר מראה גופו היינו מראה (Aruch Completum, s. v. חלזון). Khout here really betrays complete ignorance of the nature of the dye-secretion in the *muricidae* and *purpuridae*. The Talmudic description

שנה וברמו צובעין תכלת לפיכך דמיה⁶ יקרים ובאן יגב מיניכון צבג אל תכלת של ציצית בקצד להא יניה⁷ מן אולהא לקולהם בענן צביעה לשמה וקאלו פי שרך דלך אמ' ליה אבה לרב שמואל ב"ר יהודה הא תכלתא הוי צבענן⁸ לה אמ' ליה מתיינ דם הלזון וסממנים ושדינן⁹ להו ביורה ומרתחינן ושקלינן פורתא בביעתא וטימינן לה באודרא ושדינן ליה להווא דבביעתא וקלינן ליה לאודרא שמע מינה תלת שמע מינה טעמה פסלה¹⁰ ושמע מינה טעימה פסולה ושמע מינה בענן צביעה לשמה ואקינו וקאלו היינו טעימה לשמה היינו צביעה לשמה¹¹ ופרקו בקולהם אמר רב אשי מה טעם קאמר מה טעם טעימה פסולה משום דבענן צביעה לשמה¹² ולצעובה אמר אל תכלת מא כאנת תשתרא אלא מן משה רי באלתקה ואל אמאנה וכאנת מע דלך תמתחן לולא תיכון מצבינה בזיר אלצבג אלמכצום¹³ ופי דלך קאלו תכלת אין לה בדיקה ואינה נקחת אילא מן המומחה ספרים יש להן בדיקה ונקחין מכל אדם ואקישו תכלת אין לה בדיקה והא רב יצחק בריה דרב יהודה בדיק לה מיתי מנביא גילא ומיא דשבילתא ומי רגלים בני ארבעים יום ותרי לה מאורתא לצפרא אי איפרד חוותה פסולה ואי לא כשרה ורב אהא בריה דרב שירא משמיה דר'

probably applies to *Janthina* (*Janthina Pallida* Harvey, *Janthina Prolongata* Blainville), not to *Helix Janthina* as some supposed (Lewysohn, *loc. cit.*): the latter species does not really live in the Mediterranean. No serious difficulty is offered by the fact that the colour of the dye furnished by *Janthina* partakes of the violet, while תכלת, according to tradition, was an intense blue. Some other materials besides the 'blood of the *hilazon*' probably entered into the manufacture, having the effect of deadening the element of red. Compare Note 2, מע אבלאטאכר. I hope to publish shortly a work dealing with this among kindred matters, embodying my own researches together with the illuminating remarks of my learned friend M. L. Germain, Dr. ès Sciences, of the Muséum national d'Histoire naturelle.

⁶ Better than דמיו of the editions.

⁷ Professor Barthélemy of the École des Hautes Études to whom I forwarded a copy of the text has suggested יעא'נה.

⁸ The editions צבעיתו.

⁹ The editions ורמינן.

¹⁰ Cf. editions.

¹¹ Cf. editions.

¹² Cf. editions.

¹³ Professor Barthélemy corrects אלמרסום.

אבא אמ' כותא חמירא ארסכא דספרי¹⁴ ואפי לה אי אשתנאי למעליותא
 בשרה ואי לא פכולה וסימניך שינוי שקר שינוי אמת, ופרקו וקאלו מאי
 אין לה בדיקה נמי מישום טעימה. מר ממישיכי איתי בשני רב אחאי
 ברקוה ברבר 'צחק בריה דרב יהודה ואשתנאי לגרעותא בדקוה ברבר
 אוזא¹⁵ ואשתנאי למעליותא אמר להו רב אחאי הא לא תכלה היא ולא
 קלה אילן היא אילא שמע מינה שמעותא אהדדי איתמר. ר' מאני דייק
 וואבין כחומרי מתניאתא אמ' להו ההוא סאבא הכי עבוד קמאי דקמך
 ואצליה בעיסקיהו. פאן אשתרי אוזר עליה ציצית וכאן שראה מן ישרי¹⁶
 כאן דלך דלך ג... ולו אשתראה מן גי תאגר גאז איינא פאן אשתראה
 כאן עליה חלהא(?) ותעליך(?) בדלהא, ופי דלך קאלו הלוקח טלית
 מצויצת מן השוק מישראל הרי היא בחזקתה מן הגוי מן התגר כשרה מן
 ההדיוט¹⁷ פסולה אף על פי שאמרו אין אדם רשאי למכור טלית מצויצת
 בשוק עד שיתיר ציציותיה, וקד תבין ממא קדמניאה פי בלאמנא אן תפסיר
 מן ההדיוט כותי והו אלסאמרי לאנהם קד קאלו פי מוצע אכר מאן
 הדיוטות כותאי.

HEBREW TRANSLATION

והפרק התשיעי

מאמר בענין התכלת

נאמר כי העליון אמר... ובא לנו הידיעה שהיו צובעים בדם היה
 של ים ישימה חלזון בתערובת דבר אחר ועל זה אמרו חלזון זה... והצובע

¹⁴ Cf. editions, and cf. פסחים 42 a, קולן של סופרים.

¹⁵ Doubtless a copyist's mistake for אחא. See דקדוקי סופרי, Menahot 43 a.

¹⁶ = ישראל.

¹⁷ The remark that הדיוט here means Samaritan is as astounding as it is unparalleled, the reference to סנהדרין 21 b being altogether irrelevant. One almost feels inclined to doubt that the statement emanates from the Gaon. It would be interesting to compare the passage in the כתאב אחכאם referred to as containing the grounds for this curious interpretation, but unfortunately I have only the last two chapters at my disposal. Compare, for instance, בשם יאונאה להדיוט כך אונאה לתגר, 51 a. בבא מציעא

התכלת לתכלית (זו) היה צריך להשגיח עליה מתחלתה כמו שאמרו בענן צביעה לשמה ואמרו בענין זה אמר ליה אבה... ומפני הקושי שבתכלת לא היתה נקנית אלא מן המפורסמים לאנשי אמת ואמנה, ואף על פי כן היתה נבדקת שמה נצבעה בצבע אחר שלא מן המפורש ועל זה אמרו תכלת אין לה בדיקה... והקשו ואמרו תכלת... ותירצו מאי אין לה בדיקה... ואם קנה טלית ועליה ציצית אם קנאה מִיִּשְׂרָאֵל... ואם קנאה מגוי תגר יוצא... ועל זה אמרו הלוקח טלית... וכבר נתפרש במה שאמרנו למעלה בבאורנו שכונת דבורם מן ההדיוט כותי והוא שמרנו לפי שכבר אמרו מאן הדיוטות כותאי.



A VOLUME OF THE BOOK OF PRECEPTS

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IV

THE PRESERVED FRAGMENT COMPARED WITH
MAIMONIDES

WHILE giving a *résumé* of the precepts that are preserved in this manuscript, I find it instructive to compare them with those enumerated by Maimonides in his *Sefer ha-Miṣvot*. In his younger days Maimonides regarded Ḥefeṣ as a reliable authority, and followed him in various explanations of the Mishnah, though he seldom mentions his name. It is only in two places that Maimonides declares his indebtedness to Ḥefeṣ, and in both cases he throws the responsibility of his errors upon the latter. When asked by his pupils about certain statements that occur in his *Yad ha-Ḥazaḳah* and do not harmonize with his commentary, he replies that the explanations found in his *Code* are the correct ones, whereas the others are due to the influence of Ḥefeṣ.¹⁸² This, at all events, is sufficient ground for the assumption that Maimonides readily borrowed explanations from the latter.

Book 3, section 3, precept 8. Only the end of this precept is preserved. We are in the midst of a lengthy quotation

¹⁸² *Pe'er ha-Dor*, 140, 142. The Hebrew translation by Tama is very vague and sometimes misleading. See Geiger, *מלא חפנים*, p. 55. The Arabic original of the first reference is given by Munk in his *Notice sur Abou'l Walid*, p. 198.

from Tosefta Shebu'ot 1, 8, dealing with the case of a man who entered the Sanctuary while ritually unclean, without being aware of it. As the following precepts show, this precept must have dealt with civil matters, and it is hard to see to what purpose such a quotation was introduced. It is, however, possible that this discussion was a mere digression. But I suspect that this section is disarranged, since in any case we have ordinances appertaining to damages and sacrifices in one and the same section.¹⁸³

Ibidem, precept 9. He who kindled a fire which went forth and consumed his neighbour's crop or anything lying in the field should pay full damages. If the conflagration was caused by the wind, he who kindled the fire is free. It matters not whether he kindled the fire intentionally or not. If the fire crossed a river or pond which is eight cubits wide, or a public road which is sixteen cubits wide, he is not obliged to pay damages. If a man kindled a fire in his own yard and the flame or sparks flew over and consumed something in his neighbour's yard, it is necessary to investigate and see whether the fire as intended by him who kindled it was sufficiently strong to go over to the neighbour's yard or not. In the former case he is to pay for the damages, but not in the latter. As to the distance a fire is apt to cross while the wind blows, Tosefta Baba kamma 6, 22 is quoted. If while consuming a barn the fire also destroyed something which is customarily placed there, he who kindled it is obliged to pay for it.

This corresponds to Maimonides, positive precept 241, where three lines are devoted to it, reference being made to Baba kamma.

Ibidem, section 4a, precept 1. If an ox which is not in

¹⁸³ See above, chapter III.

the habit of goring gores a man to death, the ox shall be stoned, and its flesh shall not be eaten; but the owner of the ox shall be free. Thrusting, biting, crushing, and kicking are included in the category of goring. Beasts of prey, or otherwise, and birds are to be treated like an ox. If the owner of the ox sold or consecrated it, before it was put on trial, the action is valid; after that, the action is not valid. It is unfit for a sacrifice; it must therefore be sold, and the price thereof is to be used for repairing the Temple. If the ox was trained to gore, it is not to be killed, and is fit for a sacrifice. It is prohibited to derive any benefit from the body of an ox that was stoned.

Maimonides divides this precept into two: positive precept 237, merely stating that we are commanded to adjudicate the case of a goring ox, and negative precept 188, dealing with the prohibition of eating the flesh of a stoned ox. Ḥefes regards these two as one precept, because they are the consequences of one deed.

Ibidem, precept 2. If the ox was in the habit of goring, the owner having been warned to guard it, and it killed a man, the ox is to be stoned, and the owner is worthy of death at the hands of God. The owner should also pay ransom, which should be fixed by arbitration. An ox put in this category is one which gored on three consecutive days. The owner must be warned in the presence of the judges. In case the ox is unmanageable, it must be slaughtered. The court is to compel the owner of the ox to satisfy his litigant. Tradition tells us that there are twenty crimes whose punishment, which is not mentioned in Scripture, is to be meted out by God. The different laws, depending upon the ownership of the place where the accident of goring took place, are minutely described in the

name of R. Simeon (Tosefta Baba ḥamma 1, 6). The proof that these two precepts do not apply to our times is to be found in Sanhedrin 2 a, Shabbat 15 a, and Berakot 58 a.

Maimonides does not count this precept separately. He obviously includes it in the preceding, not differentiating between *tam* and *mu'ad*. He no doubt rejects this as a separate precept in accordance with principle 7 which he laid down in his introduction to his *Sefer ha-Miṣwot*.¹⁸⁴ The key-note of that principle is that the developments and ramifications of a precept must not be counted separately.¹⁸⁵ He goes on to explain at length that the various cases under one heading must not be mistaken for precepts, even if the Pentateuch enumerates them separately.

Ibidem, precept 3. If the congregation of Israel erred unwittingly, and the thing was hidden from the eyes of the assembly; when their sin becomes known unto them, they are to offer a young bullock for a sin-offering and bring it before the tent of meeting. The rites are to be carried out in accordance with Lev. 4. 13-21. By the words *the congregation of Israel* the judges of the first rank are meant. The words *and the thing was hidden* imply that part of a law, not the entire law, was broken. The transgression must be such that, if committed wittingly, the transgressor would be cut off from his people, that is to say, his punishment would be כרת.

This corresponds to Maimonides, positive precept 68, where reference is made to Horayot and Zebahim.

Ibidem, precept 4. If a king sinned, and did unwittingly a forbidden thing; when his sin becomes known unto him, he shall bring a goat, a male without blemish. The rites

¹⁸⁴ Ed. Bloch, pp. 21-6.

¹⁸⁵ לא ינבני אן יעד פקה אלשריעה (p. 21).

are to be carried out in accordance with Lev. 4. 22-6. It is necessary that he himself should become aware of his sin. This sacrifice is specially prescribed for a king. If he transgressed while being king, and was deposed in the meantime, before he brought the sacrifice, he is to bring it afterwards, as though he were still king.

Maimonides does not count this precept separately, and he obviously includes it in the following. Here again, as in the case of precept 3, 4 a, 2, principle 7 would bar this precept from being reckoned separately.

Ibidem, precept 5. If a layman transgresses unwittingly, and subsequently becomes aware of his transgression, he should bring for his oblation a goat, a female without blemish. The rites are to be performed in accordance with Lev. 4. 27-35. This ordinance applies also to a member of the court of justice who acted on his own decision. If, however, he acted on the decision of the court, he is not obliged to bring the sacrifice. The transgressor is to bring the sacrifice only in the case when he committed the deed alone; but if the deed was committed by more than one person, there is no need to bring an offering.

This corresponds to Maimonides, positive precept 69, where reference is made to Horayot, Keritot, Shabbat, Shebu'ot, and Zebaḥim.

Ibidem, precept 6. A man who commits a sin without knowing it, must bring a ram without blemish for a trespass-offering. The rites are to be performed in accordance with Lev. 5. 17-19. Tradition tells us that this sacrifice applies to a man in whose presence were two kinds of food, one of which was forbidden: he ate one kind and knows not which it was; or to a man in a similar case of doubt. If he subsequently realized that he had trans-

gressed, he should bring a trespass-offering; but if he is still in doubt, he brings a *suspended trespass-offering*. If, however, after bringing a *suspended trespass-offering* (before it was slaughtered) he realized that he transgressed, or became sure that he did not transgress, it is necessary to delay the slaughtering of the animal. It must be allowed to graze until it contracts a blemish, so that it might be sold, and for the price thereof another animal be bought and sacrificed as a free-will offering.

This corresponds to Maimonides, positive precept 70, where the case is explained as by Hefes and reference is made to Keritot.

Ibidem, precept 7. If the congregation of Israel erred by worshipping idols, they should bring a young bullock for a burnt-offering and a he-goat for a sin-offering. The rites are to be performed in accordance with Num. 15. 22-6. This precept, like precept 3 of this section, applies to the judges. The proof that this transgression is in connexion with idolatry is to be found in Sifre, p. 31 b, (ed. Friedmann).

Maimonides does not count this precept separately, according to principle 7,¹⁸⁶ and he obviously includes it in 68.

Ibidem, precept 8. One person who sins unwittingly by worshipping idols should bring a she-goat, a year old, for a sin-offering. The rites are to be performed in accordance with Num. 15. 27-8. The proof that this transgression is in connexion with idolatry is to be found in Sifre, p. 32 b.

This precept, too, is not counted separately by Maimonides, according to principle 7,¹⁸⁷ and he includes it in 69.

Ibidem, precept 9. A man who stole something, and is

¹⁸⁶ See the preceding two notes, and the page to which they refer.

¹⁸⁷ See above, notes 184, 185, and the page to which they refer.

unable to restore the stolen property and its double, or the value thereof, to its owner, shall be sold for his theft.

Maimonides does not count this precept separately, according to principle 7,¹⁸⁸ and he obviously includes it in positive precept 239, which deals with theft.

Book 3, section 4 b, precepts 1 and 2. He who is commanded to bring a tenth of an ephah of fine flour in connexion with certain sacrifices is forbidden to pour oil or put frankincense upon it. The prohibition against pouring oil is one precept, and the prohibition against putting frankincense is another. Tradition tells us that this prohibition is only against that part which is to be offered up, but the priest may pour oil or put frankincense upon the remainder. If he put frankincense on the part that is to be offered up, he may remove it. This naturally does not apply to oil, which cannot be removed.

Maimonides, too, counts these two precepts separately. They correspond to negative precepts 102, 103, where Menahot 59 b is quoted in order to prove that these two precepts are to be reckoned separately. The reason why Ḥefeṣ treats of these two precepts in one paragraph is because they are derived from one verse.

Book 4 deals with sacrifices which are offered freely ; it is explained that it is forbidden for a man who is not of the seed of Aaʾon to offer up sacrifices upon the altar ; it further treats of vows, consecration of property, estimation of lives, and similar subjects. It contains thirty-six precepts, which are divided into three sections. The first section treats of animal sacrifices, and does not apply to our times. This section is subdivided into two subsections : one containing ten positive precepts, and the other com-

¹⁸⁸ See above, notes 184, 185, and the page to which they refer.

prising eight negative precepts. The second section contains seven precepts dealing with meal offerings, and is also inapplicable to our times. It is subdivided into two subsections: one containing five positive precepts, and the other comprising two negative precepts. The third section consists of eleven precepts concerning the consecration of property and the estimation of lives, and is subdivided into two subsections: one containing eight precepts, five positive and two negative, which do not apply to our times, and the other comprising three positive precepts which are obligatory throughout all ages.

Book 4, section 1 a, precept 1. He who freely offers a burnt-offering of the herd is commanded to bring a male without blemish. The rites are to be performed in accordance with Lev. 1. 3-9. He has to be present while the animal is offered up. The slaughtering may be performed by anybody, including women and slaves, provided they are ritually clean. The offering up, however, must be done by priests. Details of the procedure are given in accordance with tractate Tamid.

This corresponds to Maimonides, positive precept 63, where the whole subject is disposed of in a few lines.

Ibidem, precept 2. He who freely offers a burnt-offering of the flock is commanded to bring a male without blemish. The rites are to be performed in accordance with Lev. 1. 10-13.

Maimonides, according to principle 7,¹⁸⁹ does not count this and the following precepts separately, but includes them in the preceding precept.

Ibidem, precept 3. He who freely offers a burnt-offering of birds is commanded to bring turtle-doves or young

¹⁸⁹ See above, notes 184, 185, and the page to which they refer.

pigeons. The rites are to be performed in accordance with Lev. 1. 14-17. Turtle-doves are fit for this oblation only when they become yellow, while young pigeons cease to be fit as soon as they become yellow. The priest must sever the head from the body in the manner described in Tosefta *Korbanot* 7. 4.

Ibidem, precept 4. We are commanded to bring our burnt-offerings, sacrifices, tithes, heave-offerings, vows, free-will-offerings, and the firstlings of our herd and flock unto the special place.

Maimonides counts this section of the Bible as three positive precepts (83, 84, 85) and one negative (89). Positive precept 83 of Maimonides is slightly different, but, as he derives it from the same verse, this precept of Hefeş may be regarded as covering it entirely.

Ibidem, precept 5. He who brings a peace-offering must bring the fat with the breast upon his hand that it may be waved before the Lord. The rites are to be performed in accordance with Lev. 7. 30, 31. The waving must be done towards all directions.

Maimonides does not count this separately, according to principle 12,¹⁹⁰ and he obviously includes it in positive precept 66.

Ibidem, precept 6. It is commanded that the various kinds of fat of a peace-offering of the flock should be offered upon the altar. The rites are to be performed in accordance with Lev. 3. 9-11. If one who brought a peace-offering thought that it was a firstling or tithe, this thought disqualifies the sacrifice. But if while slaughtering a firstling

¹⁹⁰ This principle says that the parts of a ceremony in connexion with a precept must not be counted separately: לא יבני אן תעד אנוא צנאעה מא : לא יבני אן תעד אנוא צנאעה מא (ed. Bloch, pp. 47-50).

or tithe he intended it to be a peace-offering, the sacrifice is not thereby disqualified.

This precept, too, is included by Maimonides in positive precept 66. It is not counted separately, in accordance with principle 12.¹⁹¹

Ibidem, precept 7. It is commanded that we bring fine flour, wine, and oil when we offer lambs, rams, or young bullocks as burnt-offerings, or sacrifices to accomplish a vow, or free-will offerings. The libation is not necessary for all sacrifices, but only for some of them.

This precept is also omitted by Maimonides, in accordance with principle 12.¹⁹²

Ibidem, precept 8. If the animal brought as an oblation has a blemish, it can only be brought as a gift, but must not be offered for a vow. The various terms mentioned in Lev. 22. 23 are explained in accordance with Bekorot 40a. Such an animal must be sold, and the price thereof used for repairing the Temple.

Maimonides does not count this as a precept, because that verse in Leviticus really prohibits the offering of animals with blemishes. The permission to use it for a free-will offering cannot be regarded as a separate precept according to principle 7.¹⁹³

Ibidem, precept 9. A free-will offering and an oblation brought in fulfilment of a vow must be eaten on the day when it was sacrificed and on the morrow.

Maimonides does not count this separately, according to principle 7.¹⁹³

Ibidem, precept 10. He who brings a thank-offering is

¹⁹¹ See preceding note.

¹⁹² See note 190.

¹⁹³ See above, notes 184, 185, and the page to which they refer.

commanded to bring unleavened cakes mingled with oil, and unleavened wafers anointed with oil, and cakes mingled with oil of fine flour soaked, and cakes of leavened bread. He must bring ten pieces of each kind, all of which amount to forty. The quantity of oil is half a log.

Maimonides omits this precept according to principle 12.¹⁹⁴

Book 4, section 1 b, precept 1. He who sacrifices a thank-offering must not leave the flesh thereof until the morning of the third day, but he must eat on the day when it was sacrificed and on the night of the second day. Tradition tells us that he must not eat of this sacrifice after midnight of the second day in order to avoid a transgression.

This corresponds to Maimonides, negative precept 131, which is of a much wider scope.

Ibidem, precept 2. It is prohibited to sacrifice an animal that is blind or has any other blemish mentioned in Lev. 22. 22. The various blemishes are described and explained in accordance with Bekorot 41 a, 43 a, 44 a.

Maimonides has three negative precepts about sacrificing an animal with a blemish: 92 forbids the slaughtering; 93 forbids the sprinkling of the blood; 94 forbids the burning of the limbs. He derives these precepts from Lev. 22. 22–24 as explained in Sifra.

Ibidem, precepts 3 and 4. It is forbidden to offer up an animal that is castrated or has any other blemish mentioned in Lev. 22. 24. These blemishes are explained in accordance with Bekorot 39 b, Tosefta Yebamot 10. 5, and Sifra. It is forbidden to castrate a human being or an animal. Tosefta Makkot 4. 6 is quoted to explain all cases.

¹⁹⁴ See above, note 190.

Maimonides omits precept 3 according to principle 7,¹⁹⁵ and obviously includes it in the preceding. Precept 4 corresponds to Maimonides, negative precept 361.

The reason why Hefes groups these two precepts together in one paragraph is because they are both derived from one verse.

Ibidem, precept 5 and 6. It is forbidden to bring for an oblation the hire of a harlot and the wages of a dog. The explanation of *hire* and *wages* is given in accordance with Temurah 29 a. If two partners had a certain number of cattle and one dog, and they divided them into two parts equal in the number of the heads, the part without the dog is forbidden, for one of them corresponds to the dog in the other part, and is hence the exchange of a dog. But the share containing the dog is not forbidden. The offspring of the hire of a harlot or the wages of a dog is qualified for a sacrifice.

Maimonides, quite inconsistently, reckons these two cases as one precept (negative precept 100).

These two precepts are again grouped by Hefes in one paragraph, because they are derived from one verse.

Ibidem, precept 7. It is forbidden to exchange an animal which has been prepared for a sacrifice for another. If such a thing took place, both animals are holy unto the Lord. If the offspring or exchange was exchanged, the other animal does not become holy thereby. Under no circumstances must the animal be exchanged, even if the first animal had a blemish, while the second was sound. He must not exchange one animal for a hundred animals and *vice versa*. Even if the exchange was done unintentionally, the other animal becomes holy.

¹⁹⁵ See above, notes 184, 185, and the page to which they refer.

This corresponds to Maimonides, negative precept 106, where reference is made to Temurah.

Ibidem, precept 8. It is forbidden that we should eat outside the special place the tithes of grain, of new wine, or of oil, or the firstlings of the flock or the herd, or vows, or free-will offerings, or heave-offerings. Tithes will be explained in the sixth book, firstlings in the fourteenth book; vows of all description were dealt with in the first book, and will be further treated of in this book.

Maimonides counts this as eight separate negative precepts (141, 142, 143, 144, 145, 146, 147, 149), thus reckoning each case separately. It is quite impossible to assume that Ḥefes enumerated these cases separately in the other books to which he refers, for no trace of them is found in the present book where vows are dealt with.

Book 4, section 2 a, precept 1. He who brings an oblation of a meal-offering of fine flour is commanded to pour oil upon it and put frankincense thereon. The rites are to be performed in accordance with Lev. 2. 1, 2. The flour must not weigh less than seven hundred and twenty drachmae, and the oil not less than one hundred drachmae. There are ten kinds of meal-offerings from which a handful is to be taken, and all of them are enumerated in Menahot 72 b. The measure of a handful (*kemiṣah*) is the width of three fingers, that is to say, the hand without the thumb and pointer.

This corresponds to Maimonides, positive precept 67, which is of a more general character. Reference is there made to Menahot.

Ibidem, precept 2. He who brings an oblation of a meal-offering baked in the oven is commanded to bring unleavened cakes of fine flour mingled with oil, or un-

leavened wafers anointed with oil. He has the choice of bringing either cakes or wafers. The oil is to be smeared in the shape of a semi-circle.

Maimonides does not count this and the following two precepts separately, according to principle 7.¹⁹⁶ He includes them in the preceding precept.

Ibidem, precept 3. He who brings an oblation of a meal-offering of the baking-pan is commanded to bring it of fine flour, unleavened, mingled with oil; he should part it in pieces, and pour oil thereon. The word מִחֶבֶת is explained in accordance with Menaḥot 63 a and Sifra. Each piece must be of the size of an olive.

Ibidem, precept 4. He who brings an oblation of a meal-offering of the frying-pan is commanded to make it of fine flour and oil. The word מִרְחֶשֶׁת is explained in accordance with Menaḥot 63 a.

Ibidem, precept 5. It is obligatory to salt sacrifices. Only the part which is actually offered up should be salted, not the entire sacrifice. Thick salt is to be used, so that it should not dissolve quickly.

Maimonides makes two precepts out of this one: positive precept 62, which corresponds to this, and negative precept 99, which is a prohibition against offering up a sacrifice without salt. He refers to Menaḥot and Zebahim.

Book 4, section 2 b, precept 1. It is forbidden to burn leaven or honey as an offering. By *honey* is meant *dates*. If the slightest quantity of honey or leaven was mingled with anything that is to be offered up, that part becomes disqualified, according to Sifra.

This corresponds to Maimonides, negative precept 98,

¹⁹⁴ See above, notes 184, 185, and the page to which they refer.

where a reason is given why honey and leaven are not counted separately.

Ibidem, precept 2. It is prohibited that one who is not of the seed of Aaron should associate with priests in matters wherein they are considered superior to all other men.

This corresponds to Maimonides, negative precept 74.

Book 4, section 3 Aa, precept 1. A man who vows his person unto the Lord should give as his value in accordance with Lev. 27. 2-7. If he is poor, he should pay as much as he can afford. There is a difference between making a vow and promising a value. Thus if a man says: 'I vow the price of my hand', the judge should estimate the excess in value of a slave who has a hand over one who lacks a hand. But if he says: 'I promise to give the value of my hand', he need not give anything. If he vowed one of his vital members, as, for instance, his heart or head, he must pay for his entire body. If he vowed the price of a child a month old, but did not pay until more than five years elapsed, he need only pay the value of the child at the time when the vow was made. If he says: 'I vow half of my value', he is to pay half of his value; if, however, he says: 'I vow the value of half of my body', he is to pay all his value. A poor man must not pay less than a sela'. If after having paid a sela' he became rich, he need not pay any more. But if he possessed less than a sela', and subsequently became rich, he is to pay the value of a rich man.

This corresponds to Maimonides, positive precept 114, where a few lines are devoted to the entire subject, reference being made to tractate 'Arakin.

Ibidem, precept 2. A man who consecrates his house unto the Lord is commanded to have it estimated by the

priest, and in case he wants to redeem it, must pay its value with the addition of the fifth part of the estimation. This ordinance refers to a dwelling-house according to Sifra.

This corresponds to Maimonides, positive precept 116.

Ibidem, precept 3. A man who vowed an unclean beast, which may not be offered as a sacrifice, unto the Lord, should have it placed before the priest, who should estimate its value; in case the former owner wishes to redeem it, he should pay its value with the fifth part of the estimation. By an *unclean animal* is meant one which is disqualified on account of a blemish, and does not refer to unclean species of animals. Our teachers declare that it is forbidden to sanctify, vow, or consecrate anything nowadays.

This corresponds to Maimonides, positive precept 115.

Contrary to his custom, Hefes disregarded here the biblical order, and placed the consecration of a house before the vowing of an unclean animal. It is, however, not unlikely that the transposition is due to a scribal error. Maimonides follows in this case the biblical arrangement.

Ibidem, precept 4. A Nazarite who unwittingly became defiled by a dead body is commanded to shave his head on the seventh day, and to bring two turtle-doves, or two young pigeons, to the priest, to the door of the tent of meeting. If the seventh day happens to be Sabbath or a Festival, he must postpone his shaving. He has the option of bringing turtle-doves or pigeons. He has to bring the sacrifice, because he did not sufficiently guard himself against defilement. He is to commence counting again the days of his separation from the day when he shaved his head.

Maimonides counts this precept and the following one as one precept, positive precept 93. He explicitly states that these two shavings must not be counted separately,

since the shaving after defilement is a legal development of the ordinances appertaining to a Nazarite, and hence is to be excluded by principle 7.¹⁹⁷

Ibidem, precept 5. When the days of a Nazarite's separation are fulfilled, he is commanded to bring as his oblation a he-lamb a year old without blemish for a burnt-offering, a ewe-lamb a year old without blemish for a sin-offering, and a ram without blemish for a peace-offering, and a basket of unleavened bread, cakes and wafers, mingled with oil; and the meal-offerings and libations appertaining to them. These ordinances apply to a man who vows to be a Nazarite for a definite period, not to a perpetual Nazarite. As for the cakes and wafers, he must bring ten of each. It is stated that he must put some of the meat upon his hair, and throw them together into the fire. He must wave the offering towards the six directions.

This corresponds to Maimonides, positive precept 93.

Book 4, section 3 Ab, precept 1. It is prohibited for a Nazarite to eat grapes, fresh or dried, to drink anything made thereof, or to eat the husk or kernel. Even unripe grapes are forbidden. There is a difference between the word גֶּפֶן and כֶּרֶם, the former specifies only various kinds of vines, while the latter embraces also olive-trees. The leaves of a vine are not forbidden to a Nazarite. If a Nazarite drank twenty-five drachmae of wine, he must be flogged. He is to be flogged for wine separately and for grapes separately.

Maimonides counts this section of the Pentateuch as five negative precepts: 202, a Nazarite must not drink wine; 203, he must not eat grapes; 204, he must not eat dried grapes; 205, he must not eat the kernels of grapes; 206, he

¹⁹⁷ See above, notes 184, 185, and the page to which they refer.

must not eat the husk of grapes. He explains the reason why he counts them as five separate precepts, because the transgressor is flogged separately for each transgression.

Ibidem, precept 2. It is prohibited for a Nazarite to shave his head. Our teachers say that the shortest period of separation is thirty days. If a man says: 'I shall be a Nazarite for as many days as the hair of my head, or grains of sand, or dust', he is to remain a Nazarite for the rest of his life. If he says: 'I shall be a Nazarite like the number of the days of the year', he is to be a Nazarite thirty days for each day of the year. He must not cut his hair with a razor or any other instrument. If some of his hair fell out because he rubbed or scratched that place, there is no sin upon him. If a plague of leprosy appears on his head, he must shave his hair when he gets purified, even before the days of his separation are fulfilled. Thirty days are to be discounted from the days which he observed as a Nazarite. These ordinances apply to a man who vowed to be a Nazarite for a definite period, but not to a perpetual Nazarite. The commandment that a Nazarite should grow his hair naturally refers to one who has hair; if he is bald-headed, he must observe the other ordinances appertaining to a Nazarite. Even if the words which he uttered only hint at separation, and do not explicitly express it, he must become a Nazarite. If, however, they merely hint at a hint of separation, he need not become a Nazarite.

Maimonides counts this precept as two: negative precept 209, where the entire subject is referred to tractate Nazir, and positive precept 92, which asserts that the Nazarite must let his hair grow. He quotes a passage from Mekilta which explicitly states that there is a negative and positive precept in this connexion. Thus, if a Nazarite destroyed

his hair with a powder, the negative precept would not be transgressed by him, since he used no instrument; he, however, transgressed the positive precept, which enjoins him to grow his hair.

Ibidem, precept 3. It is forbidden for a Nazarite to enter into the presence of a dead body. He may, however, attend to the burying of a dead body that was found on the road where no other man is present. He must not come in contact with the blood of a dead body, if the blood weighs fifty drachmae, or with a part of a dead body of the size of an olive. The laws of a Nazarite are not applicable to our times.

This corresponds to two negative precepts of Maimonides: 207 and 208. He reckons the defilement through coming in contact with a dead body as one precept, and the entrance into the house where a dead body is lying as another. He quotes tractate Nazir 42 b, which shows that two prohibitions are involved.

Book 4, section 3 B, precept 1. He who makes a vow must fulfil it. The judges are to urge him to fulfil his vow.

This corresponds to Maimonides, positive precept 94, which is rather of a more general character.

Ibidem, precept 2. A man who makes a vow or swears an oath to bind himself with a bond is commanded not to profane his word, but must do all that proceeded out of his mouth. A boy of average intelligence must fulfil his vow, though he is only twelve years and one day old. But if his intelligence is below the average, the fulfilment of the vow is not incumbent on him. Under that age he need not fulfil his vow in any case. If an intelligent boy of thirteen years and one day old made a vow, and afterwards claimed that he had no conception of the meaning of a vow,

he is obliged to fulfil it. It matters not whether the oath is explicitly expressed or merely hinted at. An oath is only valid when it makes a man abstain from doing a permitted thing, but it cannot render permissible anything that is forbidden. His oath can have no effect upon restraining others. If he made an oath to perform an impossible task, he is to be flogged. If he vowed not to eat a certain food, because it is harmful, and it is found to be beneficial to him, his vow is not valid. One who vows not to dwell in a house, even the garret is forbidden unto him. One who vows not to eat meat, the liver, spleen, and entrails are thereby forbidden. He must fulfil his vow at the earliest opportunity, and if he specified a certain time, he must observe it before that time expires. The expression, *he shall not profane his word*, implies that he may have his vow annulled by some one else, but he himself, though he is a sage, must not annul his vow.

The gist of this precept is included by Maimonides in the preceding (positive precept 94). He, however, has a separate precept which permits the absolution of vows. This is positive precept 95, which is based on Num. 30. 3. Apart from this positive precept he has negative precept 157, which is a prohibition against the breaking of one's word. Nahmanides¹⁹⁸ agrees with Hefes in counting Deut. 23. 24 and Num. 30. 3 separately.

Ibidem, precept 3. This precept deals with the vows of women whether they attained the age of puberty or not. They are divided into five classes:

(1) If a girl in her father's house, who has not attained the age of puberty and is not married, uttered a vow and her father heard it and did not protest, her vow is valid. If,

¹⁹⁸ See his *השנוות* to Maimonides's *ספר הנצות*.

however, he protested on the day when he heard it, her vow is annulled. As soon as a girl is twelve years and one day old, her vows are valid, and there is no need to examine her intelligence, unless her mind is known to be defective. A girl who is eleven years old, or less than that, can make no vows. During her twelfth year it is necessary to examine her intelligence: if it is sound, her vow is valid, and her father has the privilege of annulling it; if her intelligence is defective, her vow is not valid. A girl, twelve years and one day old, of average intelligence, who claims that she did not know the purpose of the vow, and is therefore unwilling to fulfil it, is obliged to carry out all that proceeded from her mouth. On the other hand, a girl eleven years old who claims that she understands all about a vow, need not fulfil it. If her father thought at first that the vow was made by some one else, and subsequently realized that it was his daughter, he may annul the vow as soon as he learns this fact.

(2) If a betrothed girl makes a vow, her fiancé may annul it on the day he hears of it. If he did not protest, her vow must be fulfilled. That the verses Num. 30. 7-9 refer to a betrothed girl, not to a married woman, is explicitly stated in Sifre. If a man married a woman who had a long-standing vow which causes him pain, he may divorce her without giving her any money promised in her marriage document. A man may say to a woman at the time of marrying her: 'I annul all thy vows.' The vows of a betrothed girl who has not attained the age of puberty must be annulled by her father and fiancé. As soon as she attains the age of puberty, her father has no right to annul her vows.

(3) As for a married woman, the laws appertaining to
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her vows are identical with those of a betrothed girl. The vows a husband may annul are such which cause him mental or bodily pain. If a father or husband did not know that God permitted him to annul the vows of his daughter or wife, and subsequently learned this fact, he may annul a long-standing vow on that day. If she vowed not to eat a certain thing for a month, and he permitted her to eat thereof for a week, her vow becomes automatically void. If she vowed not to eat of two kinds of food, and he permitted her to eat of one kind, she may also eat of the other kind; similarly, if he confirmed her vow with regard to one kind, it is confirmed also with reference to the other kind; provided the two kinds were included in one vow. If a man wanted to annul the vow of his daughter, and it happened that it was his wife who made that vow, but he mistook her for his daughter, the vow does not thereby become void. He may, however, annul it afterwards, if he so desires. The same applies to the case when his daughter made a vow, and he mistook her for his wife. If he heard of the vow on the Sabbath day, he must use different words in annulling it. He should say to her: 'Eat this which you vowed not to eat.' While saying these words, he must mentally annul her vow. The expression used by a husband in annulling the vows of his wife are different from those employed by a sage.

(4) A widow and (5) a divorced woman have to fulfil all their vows. This refers only to women whose marriage was consummated. If a widow or a divorced woman made a vow which should take effect after thirty days, and meanwhile she married, her husband cannot annul it. On the other hand, if while married she made a vow which should take effect after thirty days, and her husband annulled it,

she need not fulfil it, even in case she was divorced or became a widow during that time. If a widow has a brother-in-law,¹⁹⁹ he may annul her vows, but not if she has two brothers-in-law.

Maimonides does not count this as a separate precept, in accordance with principle 7,²⁰⁰ and he includes it in the preceding precept.

Book 5, precept 1. One who came in contact with the carcasses of unclean animals and beasts is obliged to be unclean until sunset. If he carried a carcass, he and his garments become unclean. After having a bath and after being washed, he and his garments are to remain unclean until sunset. It matters not whether he touched the entire carcass or only part thereof. Even if he carried the carcass by means of another object, his garments become unclean. If the carcass was upon a vessel, under which lay some food or drink, the latter do not become defiled. The law imposed upon him to remain unclean until sunset is only to prevent him from coming in contact with sacred things. Aquatic animals, with the exception of the sea-dog, do not defile.

This corresponds to Maimonides, positive precept 96. He explains that in calling this a precept he does not mean that it is necessary to become defiled; nor is it forbidden to become defiled, otherwise this would be a negative precept. It merely tells us the ordinances to be observed when a man becomes defiled.

It is to be observed that Maimonides, like Ḥefes, places the laws of uncleanness immediately after those appertaining to vows.

¹⁹⁹ In the Levirate law.

²⁰⁰ See above, notes 184, 185, and the page to which they refer.

Ibidem, precept 2. One who comes in contact with the carcasses of the eight creeping things must be unclean until sunset. A part of the flesh of these animals defiles, as well as the entire body, provided it is not smaller than the size of a lentil. Anything smaller than that size having flesh and bone combined is also defiling. In this case it makes no difference whether the part was severed while the animal was alive or dead. If a rat which is created from the earth had already flesh and skin on one part, while the remainder was joined by the skin, and it was able to move about, it defiles one who comes in contact with it. Aquatic animals belonging to this species do not defile. The garments of him who came in contact with these animals are not unclean.

This corresponds to Maimonides, positive precept 97, which is disposed of in a few lines.

Ibidem, precept 3. Any vessel or instrument upon which one of the eight creeping things fell while dead is to be unclean; it must be dipped in water, and remain unclean until sunset. These vessels are such as are fit for the work for which they were intended. The difficult words occurring in the tannaitic passages quoted in this connexion are briefly explained. Vessels are divided into two classes: (1) those which have a receptacle containing air; (2) those which are of a flat surface and contain no air. In both classes are vessels which are subject to defilement and those which are not. Vessels not subject to defilement, though they have receptacles, are sacred vessels, and those that cannot be moved when filled with the things for which they were made. Children's toys are not subject to defilement, though they can be carried when filled. If, however, these toys are durable, they are subject to defilement. A num-

ber of other cases are mentioned and passages quoted. The difficult words occurring in these passages are briefly explained. All other vessels which have receptacles, not mentioned in the foregoing, are subject to defilement. The minimum measure of a garment subject to defilement is given for various cases in accordance with Kelim 27. 5 and other tannaitic passages. If a garment smaller than the minimum measure was completed, and a piece of material subject to defilement was added to it, the entire garment may be defiled only in the case when the attached piece is of material subject to a stricter defilement than the other. If an unclean vessel decreased in size, and another vessel was made of the material, it remains unclean only in the case when it can be used for the work for which it was originally made. Vessels of a flat surface, not containing air, which are not subject to defilement are wooden vessels which are only used directly, and are not a means of using other vessels. If their usage is indirect, they are subject to defilement. A number of instances belonging to this class are mentioned.

Maimonides does not count this precept separately. He evidently includes it in the preceding precept, according to principle 7.²⁰¹ The only surprising thing is that he counts the laws appertaining to the defilement of food and drinks as a separate precept (98).

The following tabular recapitulation of the above discussion will show at a glance the relation of the two systems in enumerating precepts.²⁰²

²⁰¹ See above, notes 184, 185, and the page to which they refer.

²⁰² The first number refers to the book (פס), second to the section (DDP), the letters to the subsections, and the third number to the precept. The abbreviation p.p. = positive precept, and n.p. = negative precept. Where only two numbers occur there are no subsections.

Hefes	Maimonides	Hefes	Maimonides
3, 3, 9 = p. p. 241		4, 1 b, 7 = n. p. 106	
3, 4a, 1 = p. p. 237, n. p. 188		4, 1 b, 8 = n. p. 141, 142, 143, 144, 145, 146, 147, 149	
3, 4a, 2 —		4, 2a, 1 = p. p. 67	
3, 4a, 3 = p. p. 68		4, 2a, 2 —	
3, 4a, 4 —		4, 2a, 3 —	
3, 4a, 5 = p. p. 69		4, 2a, 4 —	
3, 4a, 6 = p. p. 70		4, 2a, 5 = p. p. 62, n. p. 99	
3, 4a, 7 —		4, 2b, 1 = n. p. 98	
3, 4a, 8 —		4, 2b, 2 = n. p. 74	
3, 4a, 9 —		4, 3Aa, 1 = p. p. 114	
3, 4b, 1 = n. p. 102		4, 3Aa, 2 = p. p. 116	
3, 4b, 2 = n. p. 103		4, 3Aa, 3 = p. p. 115	
4, 1a, 1 = p. p. 63		4, 3Aa, 4 —	
4, 1a, 2 —		4, 3Aa, 5 = p. p. 93	
4, 1a, 3 —		4, 3Ab, 1 = n. p. 202, 203, 204, 205, 206	
4, 1a, 4 = p. p. 83, 84, 85, n. p. 89		4, 3Ab, 2 = n. p. 209, p. p. 92	
4, 1a, 5 —		4, 3Ab, 3 = n. p. 207, 208	
4, 1a, 6 —		4, 3B, 1 = p. p. 94	
4, 1a, 7 —		4, 3B, 2 = p. p. 95 (?), n. p. 157	
4, 1a, 8 —		4, 3B, 3 —	
4, 1a, 9 —		5, 1 = p. p. 96	
4, 1a, 10 —		5, 2 = p. p. 97	
4, 1b, 1 = n. p. 131		5, 3 —	
4, 1b, 2 = n. p. 92, 93, 94			
4, 1b, 3 —			
4, 1b, 4 = n. p. 361			
4, 1b, 5 } = n. p. 100			
4, 1b, 6 }			

We thus see that out of the fifty-one precepts (the first of our fragment is not considered, because it is impossible

to ascertain what it dealt with) Ḥefeṣ and Maimonides agree on thirty. Out of the twenty-one precepts counted separately by Ḥefeṣ, but omitted by Maimonides, twenty can be accounted for by two of the principles laid down by the latter. Sixteen are excluded by principle 7,²⁰³ while four (4, 1a, 5; 4, 1a, 6; 4, 1a, 7; 4, 1a, 10) are omitted by principle 12.²⁰⁴ The remaining precept which Maimonides counts as one (n. p. 100), whereas Ḥefeṣ reckons it as two (4, 1b, 5; 4, 1b, 6), is the prohibition against offering the hire of a harlot or the wages of a dog upon the altar. This case must be put down, I think, to the inconsistency of Maimonides.

To make up for these twenty-one precepts, Maimonides has twenty-one other precepts which are not counted separately by Ḥefeṣ. It is true that we cannot be certain about a few of them, for they may have been placed in another part of the book. This is, however, unlikely, for Ḥefeṣ, according to his method of presentation, would not have neglected to inform us of that fact. Moreover, practically in every case we were able to see the reason of the discrepancy.

As a result of this examination it may be stated that there are three fundamental differences between the systems employed by Ḥefeṣ and Maimonides, respectively.

(1) The various ramifications and hypothetical cases of a certain group of laws, provided they are explicitly mentioned in the Pentateuch, are counted separately by Ḥefeṣ, whereas Maimonides regards them all as one precept. The latter emphatically differentiates between a law (משפט) and

²⁰³ See above, notes 184, 185, and the page to which they refer.

²⁰⁴ See above, note 190.

precept (מצוה).²⁰⁵ Principle 7, in which this point is clearly brought out, seems to have been chiefly directed against Hefes.²⁰⁶ This principle was sometimes broken also by Maimonides himself. He felt the inconsistency, and when he counts certain precepts which should have been excluded, he defends himself by saying that in the Talmud or in a halakic Midrash it is explicitly regarded as a separate precept. But then this proves that according to the Talmud this principle is not valid.

(2) Hefes does not count contraries twice. He either reckons it as a negative or positive precept. Thus since a Nazarite is prohibited to shave his head, there is no need to reckon as a positive precept that he is commanded to let his hair grow. If a sacrifice must be salted, there is no need to count as a negative precept that it is forbidden to offer up a sacrifice without salt. Maimonides, on the other hand, counts them separately. It is chiefly for this reason that in the part which we have discussed in detail Maimonides has more negative precepts than Hefes. In counting such a case as a positive or negative precept the latter is mainly guided by the context of the Pentateuch, but he probably was also influenced by circumstances, and put the precept in the category he required. It should be stated

²⁰⁵ *Sefer ha-Miṣvot*, ed. Bloch, p. 25.

²⁰⁶ While reading *Pe'er ha-Dor*, 140, where Maimonides designates Hefes as כותב הדין, I was led to believe that there was an intentional slur in that title, as one would say, that Halakist is a good codifier, 'a writer of laws', but is not sufficiently logical to enumerate the precepts. Fortunately, however, Munk (*Notice sur Abou'l Walid*, p. 198) quotes the Arabic original from a manuscript which is now, I believe, in the hands of D. Simonsen of Copenhagen. There Maimonides calls Hefes 'the author of the Book of Precepts' (صاحب كتاب الشرائع). It is only in Tama's inaccurate Hebrew translation that the words כותב הדין were supposed to cover that expression.

that Ḥefeş is not quite consistent in this respect. Thus he counts as a positive precept that we are commanded to bring our burnt-offerings, sacrifices, vows, free-will offerings, and the firstlings of our herd and flock unto the special place.²⁰⁷ But practically the same thing is reckoned as a negative precept: it is forbidden to eat outside the special place the tithes of grain, or of new wine, or of oil, or the firstlings of the flock or the herd, or vows, or free-will offerings, or heave-offerings.²⁰⁸ This inconsistency is, however, due to the circumstance that the Pentateuch stated both cases, the positive and the negative, explicitly.²⁰⁹ Maimonides, on the other hand, is not guided by the Pentateuch in this matter.

(3) Ḥefeş never makes use of a verse or set of verses more than once. It is only in extremely rare cases that he derives two precepts from one verse, and then there are usually two clauses in that verse.²¹⁰ In such cases he groups the precepts together in one paragraph. Maimonides, however, derives sometimes as many as eight precepts from one and the same verse.²¹¹

In general it may be stated that Ḥefeş follows the Pentateuch division very closely. If a certain law is repeated twice, it must be counted separately, especially as tradition

²⁰⁷ Book 4, section 1 a, precept 4 (text, fol. 10 a, l. 11).

²⁰⁸ Book 4, section 1 b, precept 8 (text, fol. 13 a, l. 15).

²⁰⁹ Deut. 12. 5, 6 and 12. 17.

²¹⁰ See, for instance, book 3, section 4 b, precepts 1 and 2 (text, fol. 8 a, l. 17), where two negative precepts are derived from the two clauses in Lev. 5. 11. Similarly, book 4, section 1 b, precepts 3 and 4 (text, fol. 12 a, l. 16) are derived from Lev. 22. 24. An exception to this rule is book 4, section 1 b, precepts 5 and 6 (text, fol. 12 b, l. 7), where two precepts are derived from one clause.

²¹¹ Thus negative precepts 141, 142, 143, 144, 145, 146, 147, 149 are derived from Deut. 12. 17.

usually makes the various paragraphs apply to different cases. Maimonides, on the other hand, while taking the Pentateuch as his basis, is guided by logical principles in the system of enumerating the precepts. Indeed, one may even go as far as to reduce the above three differences to this one only.

From the purely logical point of view the charge of inconsistency might with justice be brought against both Halakists. Maimonides, as was remarked above, pointed out that Ḥefeṣ had committed the same errors for which he had censured the author of the *Halakot Gedolot*.²¹² The former in his turn did not escape the stricture of subsequent Halakists like Naḥmanides and Isaac of Corbeil, the author of *דמ"ק*, neither of whom can be accused of being hostile to him on general principles. The inconsistencies are quite natural in a subject which has no basis in reality. For, although the Tannaim and Amoraim, as was pointed out above,²¹³ believed that six hundred and thirteen precepts had been revealed to Moses, the writers or redactors of the Pentateuch had certainly no inkling of this number.

V

THE STYLE OF THE BOOK OF PRECEPTS

The language of the Book of Precepts is in the usual style of Jewish-Arabic, and shares most of its characteristics. In dealing with manuscripts which are not autographs, but copies of the third or fourth hand, one is at a loss to determine which mistakes emanated from the author, and which are to be ascribed to the ignorance of the copyist. The latter, however, cannot always be made the scapegoat, and

²¹² *Sefer ha-Miṣvot*, p. 5, ed. Bloch.

²¹³ Chapter I.

it is a striking fact that almost all texts contain the same kind of mistakes. Even the oldest manuscripts show the usual characteristics. Great caution must be taken in studying the grammatical and lexical peculiarities of Jewish-Arabic. One should not rely too much on the printed texts, for it has been the custom of most editors to consider it legitimate to correct mistakes. It is quite natural to credit an author with a knowledge of grammar of the language in which he writes. But it must be borne in mind that the Hebrew and Aramaic quotations occurring in such texts are sometimes misread, but seldom, or never, tampered with, and this would tend to prove that the copyists tried to be as faithful to the original as possible. Now when due allowance is made for errors for which the copyists can reasonably be held responsible, there still remains a vast number of mistakes which would convince one that those authors were not masters of Arabic diction. This is no doubt to be ascribed to the circumstance that the Jews devoted most of their time to the study of other literatures besides Arabic. Being bilingual they fell between two stools. They seldom wrote a natural Hebrew, and their Arabic never attained the elegance of even a mediocre native writer. Their Hebrew is abounding in Arabic idioms, while their Arabic is interspersed with Hebrew words and phrases which make it unintelligible to the Arab.

When we speak of Jewish-Arabic we mean the dialect spoken and written by Jews who did not assimilate, and were therefore devoting their time and energy to the study of the Bible and the Talmud. Nobody denies the possibility of a Jew being able to acquire elegance of style in Arabic. Indeed, some of the Jews who practically assimilated with the Bedouins wrote elegant verses. It is not

a question of race, it is merely a question of pursuit and surroundings. This is a sufficient reply to those who ask why should not men like Maimonides write as good an Arabic as Heine wrote German.²¹⁴ There is no justification in comparing Maimonides with Heine, for the latter had a thorough German training. We ought rather to compare Maimonides with R. 'Akiba Eger. One would certainly not expect the latter to write an elegant German. To my mind the difference between an Arabic classic and the average Jewish-Arabic book is about the same as between Goethe and the memoirs of Glückel von Hameln published by D. Kaufmann.

On the whole the majority of post-biblical writers were slovenly in their syntactical constructions. To them the matter was the dominant factor, and the style played no important rôle. This tendency produced that careless halakic style, a mixture of Hebrew and Aramaic, of which R. Sherira's Epistle is a conspicuous specimen. Of course their Arabic was superior to their Hebrew, for after all the former was their mother-tongue.

The greater bulk of mistakes committed by these writers are such as do not apply to the spoken language. There can be no doubt that at the period from which the earliest Jewish-Arabic production dates, the nunation was no longer pronounced, and hence there were no case-endings. In practically all manuscripts we find the cases wrongly used, the accusative being employed where syntax demands the nominative, or even the genitive, and *vice versa*. They almost invariably used the accusative in the predicate when كان or its 'sisters' is absent. This is against the rules of

²¹⁴ See I. Friedlaender, *Der Sprachgebrauch des Maimonides*, p. xi.

elementary grammar, for the predicate is under such circumstances in the nominative, even when the subject is in the accusative. Numerous examples of such mistakes occur in the text of Ḥefes, and a few of them will suffice as an illustration.

Accusative for nominative : מן אנכסר לה צרפא (fol. 4 b, l. 20); וצורה אלאנתאן איצא חיואנא יסלמה רגל לרגל (fol. 12 b, l. 11); מן לנסכה; ודלך משירא אלי אלבכורים (fol. 15 a, l. 14); זמאנא מחדודא (fol. 17 b, l. 22); ואלכלים נועין (fol. 27 b, l. 23).

Accusative for genitive : נחו נארא (fol. 4 b, l. 13); חייך גיר תאבתא (fol. 21 a, l. 23); פאן חלף עלי שי ממחנעא (fol. 22 a, l. 11).

Nominative for accusative : יעב עלי הרא אלקרבאן לא דהן ולא (fol. 8 a, l. 20); ואי שריכין אקחסמא אננאם (fol. 12 a, l. 15); פאן כאן צאהב אלכלים צאנע (fol. 31 a, l. 22).

Nominative and accusative used promiscuously : מן לה יחנפל ללקרבאן חיואן הו אעמי או (fol. 3 b, l. 25); מכסורא (fol. 11 b, l. 24); ויומא ואחר (fol. 22 a, l. 21).

As in the verbs the mood-endings were dropped in the spoken language, there is great confusion in this respect in Jewish-Arabic works. We find such constructions אן יכן (fol. 16 b, l. 23); אן תכן (fol. 22 b, l. 10); קד נדרת אלא תאכלין (fol. 24 b, l. 18); אלשי אלרי ינסא מנה (fol. 30 b, l. 21). Cases like לם ידרי (fol. 7 a, l. 24, and many other places) and לם יכטי (fol. 7 b, l. 12) may belong to this class, but it is also possible to consider them as that kind of exceptional orthography which Arabs call اشباع, that is to say, the unnecessary lengthening of a vowel.

As an indication of these writers' lack of appreciation for the finesses of the language, it may be mentioned that they employ the particle ف without any force whatsoever. Ḥefes practically uses it instead of و. The monotonous

repetition of the construction **ב . . . שנים** is exceedingly irksome. The copyist cannot be held responsible for such inaccuracies, unless we assume that he deliberately changed the letter, or that the original was written in Arabic script without diacritical points, so that **ב** could be confounded with **ב** in many cases, especially when the writing was cursive. Both suppositions are, however, highly improbable. Copyists seldom change such matters, and had the original been written in Arabic script without diacritical points, there would have inevitably occurred some other mistakes of a similar nature. In the absence of such traces, we must hold the author responsible for these confusions. On the other hand the particle **ج**, which is employed with graphic effect by the Arabs to introduce the apodosis, is almost entirely absent in Jewish-Arabic works.

It is to be observed that most of the above-named grammatical peculiarities have been found in the texts of Mohammedan writers. Ibn Abī Uṣeibī'a's *History of Physicians* is often referred to in this connexion. It is true that that book contains a number of mistakes. But whereas with Mohammedan writers it is a rare exception, with Jewish writers these mistakes are practically the rule. Moreover, the evidence adduced from the mistakes is not to prove Jewish-Arabic is a separate jargon, but to indicate the fact that those writers paid no attention to the study of Arabic grammar. For such forms like **אלא תאכלין** were certainly never used in the spoken language, and were due to want of knowledge. If a few Mohammedan writers also committed such mistakes, they, too, lacked accurate knowledge of their language.

Taking all the lexical characteristics of Jewish-Arabic into consideration, we would not be far wrong if we stated

that it is a kind of a jargon.²¹⁵ This is a natural consequence of Jewish exclusiveness. A group of people speaking a language of an alien race, and forming a separate circle, would easily develop a dialect of their own, which, though essentially resembling the parent-tongue, would have a number of words peculiar to itself. Thus when Jews conversed with their co-religionists they naturally employed a number of Hebrew words appertaining to religion, and these terms gradually became part of *their* Arabic. Furthermore, Jews had a vast literature of their own which they never abandoned, and as some words, especially technical terms, are not readily found to exist in another language, they were compelled either to retain the Hebrew words or to coin new expressions. It was hard to find an equivalent for עולה; but since עלה = Arabic *صعد*, they coined a form *صعيدة*. I even suspect the existence of a form *צאערה* in Jewish-Arabic. For the broken plural of forms like *صعيدة* is usually *فَعَائِلٌ*; but Jewish writers employ *צואער*,²¹⁶ which is usually the broken plural of the active participle feminine. This would accordingly be a literal imitation of *עולֵה*. In some cases they introduced new words where genuine Arabic terms were at hand. For *מותר*, *permitted*, they could easily have used *مُكَلَّ*, but they preferred a literal translation of this word, and used *מטלק*.

Even nowadays, when public schools tend to do away with dialects, the Arabic spoken by the Jews of Tunis and Algiers differs considerably from that of the natives. A

²¹⁵ I use this term in no disrespectful sense. I would define a jargon as a dialect which had no natural development. Thus if a nation, while adopting a foreign tongue, still uses words and expressions of its former language, it may be said to speak a jargon, since it would not be readily understood by natives.

²¹⁶ See text, fol. 10 a, l. 12; Sa'adyā's translation, Deut. 12. 6.

careful study of Marcel Cohen's book on the Arabic dialect of the Jews of Algiers²¹⁷ proves this point. It is true that M. Cohen repudiates the idea that it is a jargon, but this merely depends on the point of view. The natives, who are after all the best judges, regard it as such.

It must, however, be admitted by all that want of stylistic elegance is to some extent compensated for by the marvellous vocabulary these writers have at their command. It is astounding the way Ḥefeṣ finds Arabic equivalents for the most obscure mishnic words and phrases. It is quite immaterial for our purpose whether these terms were first employed by Ḥefeṣ, or were in common use among Arabic-speaking Halakists. The fact that they were employed by Jewish writers is sufficient to indicate the extent of their vocabulary. I have no doubt that Jewish-Arabic texts have preserved some genuine Arabic words which long ago became obsolete and are not found in any of the lexica,²¹⁸ just as Jewish-German and Jewish-Spanish have retained some obsolete words of German and Spanish, respectively.

VI

THE MANUSCRIPT

The manuscript herewith edited was recently discovered by me among the Genizah fragments of the Adler Collection at the Dropsie College.²¹⁹ These fragments were acquired by Dr. Cyrus Adler while in Cairo in 1891. The entire codex consists of thirty-six and a half leaves which

²¹⁷ *Le Parler arabe des Juifs d'Alger*, Paris, 1912.

²¹⁸ A good instance is פונד (text, fol. 1 b, ll. 9, 11), which obviously denotes a *pond*.

²¹⁹ See *JQR.*, New Series, III, 317 ff.

are held together by a string. The first four leaves do not belong to the Book of Precepts. Though the writing of those leaves closely resembles that of the remainder, it is safe to say that they were not originally bound together. They have 18, and sometimes 19, lines to a page, while the number of lines on the other pages ranges from 23 to 27. These leaves are of a lighter hue than the rest. They contain gaonic Responsa dealing with widely different subjects. As the writer of these Responsa is addressed as Gaon, they could not have proceeded from the pen of Hefeş, who never bore that title officially.

The thirty-two leaves of the Book of Precepts are made up into four fascicles. Although the fascicles appear now to be unequal in the number of their leaves, I have sufficient proof that originally each fascicle consisted of ten leaves. The last page of every fascicle bears at the bottom the word with which the following fascicle begins. Each fascicle is marked by a letter of the alphabet. Guided by these signs, we can state with certainty that eight leaves of fascicle 1 are preserved, the first two leaves (not the outer sheet) being lost, while the last two are pasted to the following fascicle. The second and third fascicles are preserved in their entirety, having ten leaves each. The last fascicle has only three and a half leaves of writing, the rest being blank (except the last strip, concerning which see below), and practically torn off. The second, third, and fourth fascicles are marked א, ב, ג respectively, on the upper right-hand corner. We thus may safely assume that this volume never contained more than four fascicles, and that, with the exception of the first two leaves, we possess it in its entirety. For, although the last leaf breaks off in the middle of a sentence, the outward appearance makes it

quite evident that no writing is missing at the end, especially as the verso of the thirty-second leaf is blank.

That this was not the first volume of the Book of Precepts is self-evident, for it is inconceivable that the copyist managed to crowd the introduction and nearly three books in the narrow compass of two leaves, especially when we consider the magnitude of the first book. It was, no doubt, customary in olden times to copy separate volumes of a large work, just as pamphlets are issued nowadays. In Genizah lists of books we often come across the expression . . . **זו מן כתאב**. Among the Genizah fragments of the Jewish Theological Seminary of America I saw a number of lists with such phrases.²²⁰ Indeed, Harkavy announced²²¹ that such a list registered **זו מן כתאב הפין**. These words, however, were afterwards obliterated, for they are missing in Bacher's edition of this list.²²² Our fragment probably was such a pamphlet, and hence I am justified in supplying the title, 'A Volume of the Book of Precepts' (**זו מן כתאב**) (**אלשראיע**).

The last leaf is a narrow strip which was originally blank. One of the owners wrote on the recto the following words in bold square characters:

ליעקוב ברבי יצחק הלוי
לבנו יחידו להגות בו הוא וצאצאיו
אמן סלה

Verso was used as an account book by another owner, for it has the following inscription in a different hand, which is a sort of Oriental cursive:

²²⁰ See also *REJ.*, XXXIX, pp. 199 ff.

²²¹ *Jüdisches Literaturblatt*, 1878, p. 43.

²²² *REJ.*, XXXII, p. 127. Comp. Poznański. *אניני קירואן*, p. 28.

ענר אבו אלעלא ד דנא ויא קרא
ענר אבו אלפרג ב וי קרא
ענר יוסף י ורק ענר אלמעלם ז ורק.

The leaves measure $7\frac{1}{8} \times 5\frac{7}{16}$ in. ($= 17.6 \times 13.5$ cm.), and the number of lines in a page ranges from 23 to 27. The writing, which is in Oriental square with a distinct tendency to cursiveness, is very close, no space being allowed between separate words. It is the context alone that can help us to decide how the words are to be divided. On the whole it is written in a fairly legible hand. The only letters that are not clearly differentiated are ס and ס, while ד and ד are quite distinct, though not always correct. The copyist, however, frequently misread his original, and a vast number of mistakes crept in, apart from the usual errors due to homoioteleuton and dittography. In the original, which was before the copyist, ה, ה, and ה seem to have been subject to confusion. He accordingly wrote מתחאליה instead of מתחאליה (fol. 4a, l. 4), אלמוהל instead of אלמוהל (fol. 7b, l. 12). Similarly ד and ד, ב and ב were sometimes indistinguishable.

The orthography employed in this manuscript is that which may be termed classical, in contradistinction to the phonetic or vulgar spelling which is now and again met with in Jewish-Arabic fragments. It is, however, not quite consistent throughout the book, especially in the case of \tilde{a} at the end of the word. Short vowels are, as a rule, without any signs whatsoever; but in a few exceptional cases \tilde{z} is followed by י, as סיואן (fol. 1b, l. 6) = سِوَان ; \tilde{z} by ו, as ואלמוהל (fol. 26a, l. 11) = وَالْمُحَل ; \tilde{z} by א, as אקרעה (fol. 19b, l. 15) = اَقْرَعَ .²²³ It is hard to decide whether forms like לם יקול are to be taken as orthographic peculiarities or syntac-

²²³ This, however, may be a mistake in form: the author or copyist considered this word as a triptoton.

tical errors. As I have pointed out above²²⁴ there are cases which indisputably show that the author or copyist confounded the moods.

In classical Arabic, *ā* at the end of the word is in some cases indicated by **ا** and in others by **ى**, and there are practically fixed rules when to write the one and when the other. Thus it would be regarded as an orthographic error to spell **يُطَاعُ** or **يُطَى**. Dictionaries are careful to give the accurate forms, and where tradition wavers the fact is recorded. In this manuscript, as in all other Jewish-Arabic manuscripts, there is no fixed rule in this matter, and even one and the same word is found sometimes with **ا** and sometimes with **ى**. Thus **נָחָא** *was in the direction, was similar* (verb of **נָחַ**) is spelt **נחא** (fol. 2 a, l. 22) and **נחי** (28 a, l. 7) indifferently. Even *ā* followed by a hamza is sometimes represented by **ى**, as **אֶלְבַּנִּי** (fol. 2 a, l. 22) = **الْبَنَاءِ**; **אֶרֶי** (fol. 3 b, l. 11) = **أَرَاءِ**; **אֶלְאַסְתַּחְתִּנִּי** (fol. 20 b, l. 23) = **الْأَسْتِثْنَاءِ**. It should be observed that such orthographic inconsistencies occur also in early Mohammedan manuscripts.²²⁵

A hamza is seldom represented even in the middle of a word. Thus we have **אֶלְאַרְס** (fol. 12 b, l. 16) = **الْأَرْسُ**. It is naturally awkward to represent a hamza at the end of the word by a letter, as it is usually preceded by **ا**. When hamza, however, at the end of the word follows a consonant, **و** is sometimes the bearer thereof, as **וּלְאֶנּוּ** ²²⁶ (fol. 25 b, l. 1) = **وَالْأَنْزَى**. This **و** then becomes part of the word, and hence remains even in the accusative singular, as **בְּנוּוָא** (fol. 5 b, l. 12).

The system of transcribing Arabic words in Hebrew

²²⁴ Chapter V.

²²⁵ See Nöldeke, *Geschichte des Qorāns*, pp. 248-60.

²²⁶ Other manuscripts have **و**.

characters employed in this manuscript is that customary in Jewish-Arabic. Diacritical points are only placed over ו and ז to represent ו and ז, respectively, while א, ב, ג, and ד retain their double nature without any distinguishing mark. Thus the context alone will decide whether א stands for א or א, &c. The consistency with which this is carried out proves that this is due to phonetic influences, although this would not account for the omission of the point over ג when it represented ג, and this is one of the reasons why I did not feel justified in supplying any points. Another phonetic trace is to be found in the confusion of ו with ז. Thus we have אבזא (fol. 4 b, l. 20) = طرفا. In colloquial Arabic these letters are often confused. ظُهر, *midday*, is pronounced *duhr*; نَظَّارَةٌ, *spectacles, glasses*, is pronounced *nadqāra*. On the other hand ضابط, *an officer*, is pronounced *zābit*.

The Hebrew quotations, too, offer some interesting peculiarities. Biblical words are in the majority of cases reproduced with masoretic accuracy. But post-biblical words deviate considerably from the system of orthography to which we are accustomed. In these words there is no uniformity, and one and the same word is spelt differently in one passage, as אבא (fol. 2 b, l. 9) and אבא (*ibid.*, l. 10). The most striking mode of spelling is the frequent use of א to represent *ā* in the middle of the word, as אבאא (*ibid.*, l. 7). In this respect our manuscript resembles the bulk of Genizah fragments. It is quite legitimate to assume that this is due to Arabic influence where such a mode of spelling is the rule.

VII

REFERENCES TO HEFES AND HIS BOOK

As this is the first time that anything by Hefes is published, it will not be amiss to give the passages where he or his book is quoted or merely mentioned. Whether Hefes is the author of the *Sefer Hefes* or not, it will be useful for easy reference to have also those passages included here. But owing to the fact that there is no unanimity of opinion on this matter, I place the passages from the *Sefer Hefes* and *Sefer he-Hafes* separately. Rapoport collected a great many passages that were found in books published up till 1861. The literature that appeared subsequently was thoroughly searched by bibliographers, chiefly by Poznański. A few further references from manuscripts and printed books were supplied to me in friendly communications by Professors Davidson, Ginsberg, and Marx, of the Jewish Theological Seminary of America, to whom I give credit in the respective places. One may feel certain that no passage occurring in books printed in modern times was overlooked; but I entertain some doubts whether the halakic literature was exhausted. It is only by mere chance that I was able to add one passage from *Mordekai*, Ketubot, IX, 234 (Wilna edition).

I have arranged the passages according to the subject-matter: halakah, philology and philosophy. Authors within the same class are placed, as far as possible, in chronological order. When one passage is quoted by various authors, whether in identical form or not, I thought it advisable to give cross-references.

A. HALAKAH

(1) Isaac Alfasi, *Responsa*, 109.

שאלה. אם יש מן הדין למי שקנה חצר ומצא בה מומין שיחזור על המום ולפרש לנו טעם רבותינו ז"ל שאמרו אין אונאה לקרקעות ופירש חפץ אלוף ז"ל שדבר זה במה שקנה אדם בעצמו אבל מה שקנה על ידי שליח יש לו אונאה דיכיל למימר ליה לחקוני שדרתיך ולא לעוותי: חשובה. יש מן הדין למי שמצא מום בחצר אם לא הכיר באותו מום בשעת הלקיחה. וזהו שכתב חפץ אלוף ז"ל בענין האונאה יפה אמר.²²⁷

(2) Isaac b. Judah Ibn Ḡayyāṭ, *Sha'arē Simḥah*.a. *Day of Atonement Laws*, p. 63 (ed. Fürth, 1861).

כיצד היה מתודה אנה השם עויתי פשעתי וחטאתי לפניך דברי ר' מאיר וחכמים ואומרים חטאתי עויתי פשעתי . . . בהלכות פסק כרבנן וכן נמי פסק רב פלטואי. ורב חפץ ומר רב סעדיה פסק[ו] כר' מאיר.²²⁸

b. *Laws of Lulab*, p. 103.

יבשו רוב עליו ונשתיירו בו כדי ג' עלין לחין . . . והכי אמר רב חפץ אם נשתיירו ג' עלין כשר.²²⁹

(3) Samuel b. Jacob b. Jam', *Ordinances concerning slaughtering*.²³⁰

הגרמה היבא דמיא כגון דקא שחיט עילוי חיטא דרישא או שחיט משיפוי כובע ולמטה . . . וצאחב מדרש השבם נקל אלמסתורה לם יוד ולם ינקין סוי מא אכרזה מלשון ארמית ללשון הקדש והי אלמריקה אלדי (!) סלכהא מר חפץ אלוף ז"ל.

(4) Isaac b. Abba Mari, *Ha-'Itṭūr*, p. 32c.

וכן כתב בעל הלכות צריכי למיתב בההיא דוכתא בית דין ה' וכדכתי' גיטא לכתבו במותב תלתא הוינא וכן נמי אמר מר רב חפץ נאון.

²²⁷ See *Pišḥē Recanatī*, 386.²²⁸ See Abraham of Lunel, *Ha-Manhig*, p. 61 a.²²⁹ *Ibid.*, p. 67 a.²³⁰ See Steinschneider in *Geiger's Zeitschrift*, II, p. 77.

(5) Moses of Coucy, *Sefer Mišwot Gadol*, positive precept 48, p. 127 b.

ובספר חפ"ן כתוב שכך היה נוהג מר חפ"ן נאון שמביאין שמים וג'
כתובות מקרובותיה ונותנין כפחות' שבהן.²³¹

(6) Samuel b. Solomon in *Responsa of R. Meir of Rothenburg*, 250 (ed. Prague).

וכן מנהג של ישראל מנדין על דיני קנסות עד שיפייס עפ"י הנאונים
ורב אלפס ומר נטרונאי ומר חפ"ן ואין מרגישי' על מה שהוקשו לינקט'
בבבס' וכו'.

(7) Abraham of Lunel, *Ha-Manhig*.

a. p. 61a.

בהלכות פסקו כרבנן וכן פסק רב פלטי. אך רב חפ"ן ורבי' סעדיה
פסקו כר' מאיר מההוא דנחית קמיה דרב ועבר כר' מאיר ושביק ליה.²³²

b. p. 67 a.

וכן כתב רב חפ"ן נאון אם נשתייר בו בבל אחד ג' עלין להין כשר.²³³

(8) R. Menahem of Recanati, *Piskē Recanati*, 386.

כתב רב אלפס בשם חפ"ן אלוף ז"ל הא דאמר אין אונאה לקרקע'
הני מילי במה שקנה הוא בעצמו אבל על ידי שליח יש לו אונאה דיבול
לומר לתקוני שדרתיך ולא לעוותי.²³⁴

(9) Mas'ūd Ḥai b. Aaron. *Ma'asē Roḳeah*, quotes in his preface the following note from an old commentary on Maimonides (p. 6):

ורב חפ"ן אמר חופר בארין וקיבויין העפר ושרייתו. חפר אלארין
ונמעהא ונבלהא ועננהא ותשיכילהא וסברהא.²³⁵

²³¹ See Meir of Rothenburg, *Responsa*, 852.

²³² See Isaac b. Judah Ibn Ḡayyā, *Sha'arē Simḥah*, p. 63.

²³³ *Ibid.*, p. 103.

²³⁴ See Isaac Alfasi, *Responsa*, 109.

²³⁵ The text is slightly corrupt, and I corrected the grammatical errors.

B. PHILOLOGY

(1) Ibn Janāḥ.

a. *Kitāb al-Uṣūl* (ed. Neubauer), s. v. אשר, p. 73, l. 31 ff.

וראית פי כתאב השראע לחפין. ואמא האשרה פשגרה יעצמוןהא ובסתשקון
בורקהא ויטופון חואליהא כקולה המתקדשים והמטהרים אל הננות. וקאלו
רבוחינו פי שרחה שלש אילנות הן אילן שנטע מתחלה לעבדה זרה הרי
זה אסור שנ' ואשריהם תשרפון באש החליף [נוטל] מזה שהחליף שנ'
ופסילי אלהיהם תנדעון לא החליף אלא העמיד תחתיו עבדה זרה וסלקו
הרי זה מותר שנ' ואבדתם את שמם.

b. s. v. כסח, p. 328, l. 3 ff.

הוי למתפרות כסתות. הנני אל כסתותיכנה מזה הלפטה משורה פי
קלם האואל ו"ל פי מל קולמ הכרים והכסתות אין בהם מושום כלאים
והי הוסאד: ואמא הכרים פהי המפריות מן כתאב השראע לחפין ו"ל.

c. s. v. כרר, p. 331, l. 5 ff.

והי תספי פי קלם האואל כר פי קולמ הכרים והכסתות אין בהם
מושום כלאים וכר בכסת מתקדד ענדמם ומכזה פסריה חפין פי כתאב השראע.

d. s. v. ברכב, p. 337, l. 18 ff.

קאל חפין פי כתאב השראע ואמא ברכב המזבח פקאלזיו הנתי מן
הבנא ואהל השאם בסמון דלכ שרגבא קאל ונשל ורד באה קאן המזבח
שרגבאן אחדמה מעד לימשו עליה הכהנים ללא יזליקו אדא חדמו המזבח.
והנתי ללזינה לקולמ חנו רבנן אי זה הוא ברכב בין קרן לקרן ומקום רגלי
הכהנים אמה אטו כהנים בין קרן לקרן הוו מסגו אימא מקום רגלי הכהנים
והכתיב תחת ברכבו מלמטה עד חציו אמר רב נחמן בר יצחק תרי הוו
חד לנואי וחד לכהנים דלא לשחקרו:

e. s. v. עמר, p. 535, l. 14 ff.

וקאל חפין רחמא אללה פי לא תתעמר לא תסתחמה בענף אכר מן
אסתחמאק ללאסראילייה ואסתשהד בקול האואל לא תתעמר בה שלא תישמשנה.

وفي قول الاوائل ايضا הנזכר נפש מבני ישראל אינו חייב עד שיבניסנו
לרשותו ר' יהודה אומר עד שיבניסנו לרשותו וישתמש בו שני' והתעמר
בו ומכרו.²³⁶

f. s. v. קצע, p. 642, l. 24

وهكذا فسّر فيد راس المتيבה القيمويّ رحمه الله. الا اني رأيت في فصوص
הקטורת קציעה וקטט الذي هو القسط قد ذكرنا معا بوزنين مختلفين. قيل
מור וקציעה ושבלת נרד וכרבים משקל עשה עשר ששה עשר מנה הקוטט
שנים עשר. וקולמ הקטט هو القسط وقد كانوا ذكروا קציעה. وهكذا ترجم
חפין في הקוטט وترجم في קציעה عنبر.²³⁷

g. s. v. ראה, p. 656, l. 19 ff.

وقد قال بعض الاوائل انّ داه بالذال وראה بالراء اسمان لنوع
واحد. قالوا وماي שנא הבא דכתיבא דאה ומאי שנא הבא דכתיבא דאה
אלא שמע מינה דאה וראה אחת היא وعلى هذا القول عوّל חפין ראש
כלא رحمة الله عليه في كتابه في الشرائع.

h. *Kitāb al-Luma'* (ed. J. Derenbourg), p. 15, l. 17.

אסתכרנת תפסירה (יעני תפסיר אלאכמא ניד אלמשתקה מן אלאפעאל)
מן כתב אלעלמא ואלרוסא אלמוחוק בנקלהם כרב סעדיה ורב שרירא
ורב האייר ורב שמואל בן חפני ראם אלמתיבה וחפין ראש בלה ונייהם
מן אצחאב אלחפאסיר ואלנאונים רצי אללה ענהם אומעין.

(2) Judah Ibn Bal'ām.

a. Commentary on Num. 4. 7 (ed. Fuchs).

ואסתדל רב חפין נע אנ קשות אלואח מן קץ וקטת הסופר במתניו.
ולום לה פיה דלילא.

b. Commentary on Deut. 30. 2.

ראית רב חפין נע קד אדכל ושבת עד ה' אלהיך פי נמלה עדר
אלשראיע פי אול פצל מן כתאבה. . . ואנמא לנא חפין נע אלי תעדיד
הדה פי נמלה אלשראיע לבי מא יכמל לה אלעדד אלדי דבר אלאולון פי

²³⁶ See Solomon Parhon, *Mahberet he-'Aruk*, s. v. עמר.

²³⁷ See *ibid.*, s. v. קצע.

קולחם דרש ר' שמלאי שש מאות ושלש עשרה מצות נצטוו ישראל... ולדלך לנא רב חפין וגירה מן ידכל פיה מא לם יקע אלאמר פי הר סיני מתל נר חנכה ומקרא מנלה ומא סקט ענא פעלה מתל כיעשה משכן אלדי כאן מתל הורית שעה טול מקאמהם דון בנא אלבית וקד כאן אנבר עלי מן אדכל פי גמלה אלשראיע בקור חולים וניחום אבלים פרכל פימא אנבר ובעד דלך פלם תבלג מן קולה אינא אלי הדא אלערד בונה.²³⁸

c. Commentary to Judges 20. 28 (ed. Poznański).

בל קד ראית לרב חפין ננע פי כתאב אלשראיע מא יאיד קולי אן קצה פילנש וקעת קריבא מן זמאן אלפתח קאל לאן פיהא הותרו שבטים לבוא זה בזה במעני אנה אביח להם אלתוויג למן יטואי באלאכתלאט פי אלסבאט עלי גיר מא כאן וצעה פי בנות צלפחד ולא שך אן כאן ענדהם אסתתנא מתי שאוא אן יפצה פצוה.²³⁹

d. *Sefer Ha-Tagnis*, s. v. חרם.²⁴⁰

e. In his *Kitāb al-Tarjīḥ*, Judah Ibn Bal'ām is supposed to have had the following passage, which was afterwards excerpted by an unknown writer who mistook some of Ibn Bal'ām's remarks for those of Ḥefes.²⁴¹

תפסיר אלאלפאט מפיטום הקטורת לרב חפין ז"ל. הערי אלצטראק והו צמג אללבני. הצפרן אלטפרה. חלבנה אלמיעה. ורב סעריה ז"ל יקול פיה מחלב.²⁴² קציעה אלענבר. שבלת סנבל. כרכם אלזעפראן.

²³⁸ See Maimonides, *Sefer ha-Miṣwot*, ed. Bloch, p. 5.

²³⁹ See Tanḥum Yerushalmi on the same verse.

²⁴⁰ This is mentioned by Dukes, *Literaturblatt des Orients*, VIII, p. 680; but the passage is not quoted.

²⁴¹ Horowitz, *בית נבות ההלכות*, II, p. 63 ff. As the editor did not understand Arabic, the mistakes are exceedingly numerous. I corrected them as far as was possible, but did not consider it worth while to call attention to every correction, as this would require too many notes. The reader interested in the corrections may compare the original publication with this reprint.

²⁴² This is an interpolation, as I pointed out above, notes 68-70, and the pages to which they refer.

הקישוט אלקסט. קילופה אלבסבאסה. קנמון אלעוד. בורית כרשינה אלאיטנאן. יין קפריסין ישראב אלכבא. מלה סדומית מלה זראני. מעלה עשן ראפע אלכאן וכאנת השישה מן כאציאתהא אן יצעד דכאן אלקטרת אלתי פיהא צעידה מסתקימא. . . בתוקף אלראס עליה. פכפי אמרהא ונא פי מסכת יומא א"ר עקיבא סח לי ר' שמעון בן גולה פעם אחת יצאתי אני ואחד מבני בניהם של. . . לשדה ללקט עשבים ראיתיו שכבה ושחק אמרתי לו מפני מה בכיתה אמר לי כבוד נזכרתי ומפני מה שחקת שעתיד הקבה להחזירו לנו ומה ראית אמר לי מעלה עשן כנגדי אמרתי לו הראהו לי אמר לי יצבעה היא בידיו שאין מראין אותו לכל אדם. ואמא הצרי אלדי פסרתה אלאעמראק פהו עלי גיר מא ענד אלאולין ז"ל פאנה ענדהם אלבלסאן וכמא שרה דלך פי שבת ק"ו תניא ר' שמעון בן אלעזר אומר אין מרליקין בצרי מאי טעמ' אמר רבא מתוך שריחו נודף גזירה שמה יסתפק טמנו אמר ליה אבוי ולימא מר משום שהוא עוף וכו'. ואלדי הו עלי הדא אלצפה פהו אלבלסאן פאן דהנה עטר ויתטאיר ענד וקודה לא יתבת והדא אברא (אבין?) מא ראית פי הצרי פאעל מא וכאן אלבתכיר מנה פי כל יום מאיה דרהם סוי מלא חפני ביום הבפורים.

(3) Solomon Parḥon, *Maḥberet he-'Aruk* (ed. Stern).

a. s. v. עמר, p. 49 d.

והתעמר בו (דברי' כ"ד) לא התעמר (דברי' כ"א) דרך כחורה. ורבינו חפין סגי נהור ראש ישיבה ז"ל אמר לא תשתמש בה בפרך יותר משימושך באשתך הישראלית כדתנן הגונב נפש אינו חייב עד שיכנסנו לרשותו ר' יהודה אומר עד שיכנסנו לרשותו וישתמש בו שנא' והתעמר בו נמצא עכשיו כי והתעמר בו והשתמש בו.²⁴³

b. s. v. קצע, p. 60 c.

מר ואהלות קציעות (תהלים מ"ה) תרג' וקדה וקציעתא ובפרק פטום הקטרת קציעה פ' ענברא. ורבי' סעדיה ז"ל פ' קיטט ונתפס [לפי שנאמר בפטום הקטרת קציעה וקיטט לשיני סמנים] ורבינו חפין אלוף סגי נהור ראש ישיבה אמר ענברא והדין עמו.²⁴⁴

²⁴³ See Ibn Janāḥ, s. v. עמר.

²⁴⁴ *Ibid.*, s. v. קצע. See also Ḳimḥi, s. v.

(4) *Tanḥum Yerushalmi*, Commentary on Jud. 20. 28 (ed. Haarbrücker), p. 17.

وقال רב חפין في كتاب الشرائع ان قصة فילגש بنבעה وقعت قريبا من
زمان الفتح قال لان فيها هותרו שבטים לבוא זה בזה.²⁴⁵

C. PHILOSOPHY AND GENERAL REFERENCES

(1) Bahya Ibn Paḳūda, *Farā'id al-Ḳulūb* (ed. Yahuda).
p. 7.

والضرب الثاني مختصر عيون الشرائع اما كلها مثل كتاب ر' חפין בן
יצליח ואما ما يلزمنا منها في هذا الزمان مثل הלכות פסוקות והלכות גדולות
ומא מאלה ואما جزى من اجرائها مثل كتب سائر הגאונים في השאלות
ותשובות في فرائض الاجسام وعقد الاحكام.

(2) Judah b. Barzillai, Commentary on *Sefer Yeširah*
(ed. Halberstam), pp. 55, 56. This long passage, which
gives a Hebrew translation of the first two precepts of the
Book of Precepts, was quoted, translated, and annotated
above, Chapter II.

(3) Maimonides.

a. *Sefer ha-Miṣwot* (ed. Bloch), p. 5, l. 3 ff.

צאחב כתאב אלשראיע אלמשהור ראיתה תנבֿה עלי נז יסיר מן והם
צאחב אלהלכות ועטם עגדה אן יעד בקור חולים וניחום אבלים במא עד
צאחב אלהלכות ואלדי אסתעטמה פהו עטים לכבֿה אתי באעטם מנה
ותבעה איצא במא הו אשנע במא סיבין למן נטר פי בלאמנא הדיא.²⁴⁶

b. *Ibid.*, p. 55, l. 13 ff.

צאחב כתאב אלשראיע צֿח בולך וקאל פי אל פצל ענד תזמילה
מא ישתמל עליה דלך אלפצל בלאמא הדיא נצֿה קאל: "ומנהא אתנין

²⁴⁵ See Ibn Bal'am on this verse.

²⁴⁶ See Rapoport, *Ḳebuṣat Ḥakamim*, p. 58, and Ibn Bal'am's Commentary
on Deut. 30. 2.

ותלאתין מעני אברנא באַז תב' ותע' יתול' פעלהא לא נחן נמיעהא מעזמון. " אמא קולה ומנהא יעני מן אלשי אלדי ישתמל עליה דלך אלפעל ואלאתנן ותלאתין מעני הם תלאתה ועשרין שבין אלדי ילזמהם כרת פקט ותסעה מחויבי מיתה בידי שמים כמא עד ומעני קולה נמיעהא מעזמון יעני אַז תע' צמן אַז יכרית זה וימית זה. פלא שך אן הדא מא בקי ענדה אן יעתקד ישט מאות ושלש עשרה מצות כללה לאומה לנא בל מנהא לאום לנא ומנהא לאום לה תע' כמא קאל ובין אנה יתול' פעלהא לא נחן והדא עלם אללה כלל ענדי אכחלאט מחין לא ינבני אלכלאם פיה בונה לאַזתא אקאויל בַּנָּה אלפסאר.

c. *Pe'er ha-Dor* (ed. Amsterdam), 140, p. 25 d.

תשובה. מא שכתבנו בחבור [בדבר הפרחובל] הוא האמת אשר אין בו שום ספק וכמו כן זכרנו בפירוש המושג וזאת המושגה אשר בידכם היא הנוסחה הראשונה אשר יצאה מתחת ידיו קודם הנהגה ובארנו שם כפי מה שראינו בזה שכתב כותב הדין רב חפין ז"ל.

Munk, *Notice sur Abou'l-Walid*, p. 198, quotes part of the original of this passage.

وتبعنا في ذلك القول ما ذكره صاحب كتاب الشرائع في حפין ز"ل وهو غلط منه وكان ممّا في تبعه دون تصحيح.

d. *Ibid.*, 142, p. 26 d.

ואלו הבלבולים שהוא מבלבל והקושיות שהוא מקשה הם כלם בפי' המושגה אבל אני אתקנם בע"ה במקומותם והשי"ת יודע כי רובם הטעוני בהם המושגי אחרי דברי הנאונים כמו רבינו נסים ז"ל במגלת סתרים ורב חפין נ"ע בספר המצות וזולתם ממה שאחוס על כבודם לזכרם.

(4) A Genizah fragment containing rhymed prose.²⁴⁷

ואראה כי א[י]ן לי חפין בדברי חפ[י]ן ולא מ[י]ן יה בדברי רבינו סעדיה ואין ידי לאל בספרי נאון שמואל. ואין לי מושג כי אם במכירת החוב[י]ן [ש] ולא כצאתי מנוח עד שמכרתי בראשיות ואלה תולדות נוח.

²⁴⁷ This fragment is now at the Jewish Theological Seminary of America. I am indebted to Professor Davidson for drawing my attention to this passage, and for copying it for me.

(5) A Genizah letter at the Jewish Theological Seminary of America.²⁴⁸

כי אותן העשרים וחובים שקניתי בהם כתב המצות למרב חפץ בן
יעליה האשורי ממנו לקחתים.

(6) Abraham b. David of Portaleone, in his preface to *Shiltē ha-Gibbōrim*, acknowledges his indebtedness to Hefeş.

THE *Sefer Hefeş*

(1) R. Eliezer b. Nathan.

a. *Ibid.*, § 30. אבן העזר ספר ראב"ן.

וה"נ נמצאתי בספר חפץ שטר שחתמו עליו עדים חמש ונמצאו
נ ראשנים קרובים או פסול תתקיים העדות בשא' והוא דאיכא עדים
דבמילוי חתמו.²⁴⁹

b. *Ibid.*, p. 115 c.

וכן נמצא בספר חפץ היה חייב לחבירו שבועה ואמר לו דור לי בחיי
ראשך יכול לחזור בו עד שיקבל שבועה מפי ב"ד.

(2) R. Eliezer b. Joel ha-Levi (ראב"ה). This writer quotes this book, according to Gross.²⁵⁰ The ראב"ה is now being edited by Dr. Aptowitzer, but the first volume that has hitherto appeared contains no reference to the *Sefer Hefeş*.

(3) R. Isaac of Vienna.

Or Zarua'.

a. I, § 615.

ובספר חפץ נמי הביא דברי הירושלמי על ההיא דר"א פ"ק דתובות
ולא כתב אי סמכי' עלה אי לא.

²⁴⁸ See *JQR.*, New Series, I, p. 439. I am indebted to Professor Marx for copying this sentence for me.

²⁴⁹ See *Sefer Mordekai*, Makkot, I.

²⁵⁰ *Monatschrift*, 1885, p. 561.

b. Ibid., III, Baba kamma, § 281.

בספר חפ"ן כתוב מצינו בחיובות ישאלות של רב נטרונאי נאון שיהודי שמגרים ומאנים את חבריו ומפסידו ומענישו מימון ואין עדות באותו הענין מה יעשה. והשיב שהמוכר והמגרים לא מצו לאשתכועי ואפקועי דהיכא דאמר' כל הנשבעין שבתורה נשבעין ולא מיטלמין היכא דקים להו עלה דמלתא אבל הכא כיון דאמ' דסתם אנס... וממון דישאל כיון דנפל ביד... אין להם חנינה לפיכך נשבע הנגרם והנמכר ושקיל כל הענין מיד המוכר.

c. Ibid., § 284.

בספר החפ"ן. רב פלטואי ראש ישיבה אמר מכור פסול לעדות לא מיבעיא מכור נמור ומפורסם אלא אפי' אינש דסני לחבריה וא"ל בפני רבים אוילנא ומסירנא לך מן דיכריה רשע הוא וכי אמרו רבנן לא נחשדו ישראל על כך ה"מ דסני ליה ושתיק מישתק אבל הכא דקא פעי כפרהסי' מדיבורא קא מוזק בפסול לעדות והכי איפסקית בתרתיה מתיבתא דינא דמכור.²⁵¹

d. Ibid., § 370.

בספר החפ"ן. הכהו בנייר בפנקס בעורות ישיאין עבדין. בטימוס שטרות שבידו נותן לו ארבע מאות זוז לא מפני שהוא מכח של צער אלא מפני שהוא מכח בזיון, שנאמר קומה ה' הושיעני כי הכית את כל אויבי לחי. ואומ' ביטבט יכו על הלחי את יושבי ישראל. ואומר גוי נתתי למיכס ולחיי למורטים.

e. Ibid., § 380.

ופר"ח זצ"ל הילכתא כרבא דאין אדם מוחל על ראשי אברים ילדו. וכן בספר חפ"ן לא הביא אלא דברי רבא.

f. Ibid., § 381.

בספר חפ"ן גליון. החובל בחבירו ומית החובל יתנו לזרשין שלו לנחבל. מת הנחבל יתנו לזרשין [של] הנחבל בין שיש שם טענה בין

²⁵¹ See R. Meir of Rothenburg, *Responsa*, 252 (ed. Cremona); 307 (ed. Prague); R. Samson b. Zadok, 569; R. Meir ha-Kohen, *Haggahot Maimoniyot, Hilkot 'Eduh*, 11. 3.

יִצְאִין שֶׁם טַעֲנָה הָרִי זֶה נִשְׁבַּע וְנוֹטֵל, הִיָּה נִשּׁוּךְ בַּמָּקוֹם שֶׁאֵין יֹכֵל לִישּׁוֹךְ
אֶת עֲצָמוֹ הָרִי זֶה נוֹטֵל בְּלֹא שְׁבוּעָה, לְאַחַר זֶמֶן זֶה אוֹמֵר חִבְלַת בִּי וְהוּא
אוֹמֵר לֹא חִבְלַתִּי הָרִי זֶה כֹּאחַת מִן הַטַּעֲנוֹת.

g. Ibid., Baba mešifā, § 38.

בַּחֲפִין הַנִּיזְקִין בְּנִירְסַת יְרוּשָׁלַיִם רֵאוּבֵן גֹּזֵל שְׂדֵה מִשְׁמַעוֹן וּמִכְרָה לָלוּי
וְלוֹי נִתְּנָה בַּמִּתְנָה לַיהוּדָה בֶּא שְׁמַעוֹן וְטִרְפָּה, יְהוּדָה לֹא אוֹזֵל בְּלוֹי וְלוֹי
לֹא אוֹזֵל בְּרֵאוּבֵן א"ל לֹא מִתְנָה יִהְיֶה א"ל בְּעִינֵי תַתָּן כִּמָּה מִשְׁלֵם לִי
טִיבוֹ אֲבָל בַּעַל מִתְנָה לֹא יֹכֵל לְמִיטְרָף לְנוֹתֵן דֹּאמֵר ר' יוֹסִי אֵין שְׁעִבּוֹד
לְמִתְנָה וְה"מ שֶׁלֹּא בִּאֲחֵרִיּוֹת.

h. Ibid., Baba batra, § 76.

וּבִסְפָּר גֵּאוּנִים הִנְקֵרָא סֵפֶר חֲפִין כְּתָב וְאֵם מֵת רֵאוּבֵן תַּחֲלִילָה וְאַחֵר
כַּךְ מֵתָה אִמּוֹ אִם יֵשׁ לוֹ בֶּן עוֹמֵד בַּמָּקוֹם אֲבִיו לְהַנְחִיל אֲחִיו מֵאֲבִיו.
אִמֵּר ר' יוֹחָנָן מִשּׁוּם ר' יְהוּדָה בֶּר שְׁמַעוֹן אִשָּׁה יוֹרֶשֶׁת אֶת בְּנָה דְּבֶר תּוֹרָה
דֹּאמֵר קֵרָא מִטּוֹת מִקִּישׁ מִטָּה הָאֵם לְמִטָּה הָאֵב מִה מִטָּה הָאֵב יוֹרֶשׁ אֶת
בְּנֵי אָף מִטָּה הָאֵם אִשָּׁה יוֹרֶשֶׁת אֶת בְּנָה, וְלִיתָא אֲלֵא כִּמְתַנִּי קִיָּמָא לָן.

i. Ibid., § 78.

וּבִסְפָּר גֵּאוּנִים הִנְקֵרָא סֵפֶר חֲפִין, כְּתָב פֶּסֶק דִּינָא דְּמִר יְהוּדָאֵי גֵאוּן
רֵאוּבֵן הוּוּ לִיה בְּנֵי וְבֵת קִטְנָה שְׂכִיב בְּכוֹר בְּחַיִּי אֲבוּהִי וְשִׁבְק בְּנֵי וְבֵרַת
וְשִׁבְק רֵאוּבֵן אֲבוּהוֹן וְקָא תַבְעִין בְּנֵי בְרִיה רֵאוּבֵן חֶלֶק בְּכוֹרָה דֹּאבּוּהוֹן.
דִּינָא הוּא דִּשְׁקָלִין בְּנֵי דְּבְרִיה חֶלֶק בְּכוֹרָה וְאֵע"ג דְּשִׁבְיב אֲבוּהוֹן בְּחַיִּי
דֹּרֵאוּבֵן וְבֵת בְּכוֹר אֵין לֵה עִישׁוֹר נִכְסֵי אֲלֵא בְּנִכְסֵי אֲבִיה וְאֵי בַּעַן מִסְלָקִין
לִיה בּוּזִי וְיִהְיִין לְבַעֲלָהּ בְּרִמִּי נִסְבֵּא עַב"ל הַגֵּאוּן ז"ל.

j. Ibid., § 99.

וּפֶסֶק בִּסְפָּר חֲפִין דְּקִיָּמָא לָן עֲרַעוֹר דָּחַד.

k. Ibid., § 110.

וּבִסְפָּר חֲפִין גֵּרִסִי' הָאוֹמֵר תַּטּוֹל בְּתִי כֹּאחֵד מִן הַבְּנִים וְכו' וְהָא נִמִּי
הִלְבַּתָּהּ הִיא.

1. *Ibid.*, § 112.

ובספר החפץ כתוב ת"ר ר' יוחנן בן ברוקא אומר אם אמר על מי שראוי ל'ורשו דבריו קיימין על מי שאינו ראוי ל'ורשו אין דבריו קיימין. כיצד אם אמר על בת הבן בין הבנים ועל בן הבת בין הבנות דבריו קיימין אמר על בת בין הבנים ועל האח בין הבנות לא אמר ולא כלום עב"ל.

(4) R. Moses of Coucy, *Sefer Mišwot Gadol*.

a. Negative precept 111, p. 36 d.

אבל אם בדקה יום ראשון ויום שמיני בלבד ולא בדקה ביום השביעי בזה נחלקו רב ורבי חנינא בפרק אחרון ואליבא דרבי אליעזר דרב מתיר הואיל שבדקה בתחילתן של שבעה אף על פי שלא בדקה בסופן ורבי חנינא אוסר הואיל ולא בדקה בסופן. . . הואיל ולא נתברר הלכה בדבריו מי ראוי להחמיר בדברי רבי חנינא. . . ובספר חפץ פוסק רב ורבי חנינא הלכה כרב.

b. Positive precept 107.

וגרסי' נמי ביר' בפ"ק רסנהדרין ובספ' חפץ הביאו בימי ר' שמעון בן יוחי בטלו דיני ממונות א"ר שמעון בן יוחי בריך רחמנא דליבא חכם מידון רבי יוסי בר חלפתא באו שני אנשים לפניו לרדן אמרו לפניו על מנת שתדוננו דין תורה אמר להם איני יודע לרדן אתכם דין תורה.²⁵²

(5) R. Meir of Rothenburg, *Responsa*.

a. (Ed. Cremona), 127.

ומה שתמהת שכתבתי הנכסי בחזקת יתמי קיימי. ר"ח פסק כן בפירושו ובספר חפץ משום דמסיק לבסוף פרק אלמנה דע"ב נכסי בחזקת יתמי קיימי.

b. *Ibid.*, 252.

כתב בספר חפץ מסור פסול לעדות ולשבועה וכן פסקו בשתי ישיבות עד כאן לשונו.²⁵³

²⁵² I am indebted to Professor Louis Ginzberg for this reference. That IJefes in his Book of Precepts discussed such matters is evident from text, fol. 5 a, ll. 13 ff.

²⁵³ See above, note 251.

c. (Ed. Prague), 175.

[לענין נסבא] בלומר שאם בא להתיבן ולעשות מהן גרוטאות נמצא מרויח דיהא בהן כסף יותר מן הראשונים והועיל עליו אפי' פרוטה אסור משום רבית כך פרש"י וכן נמצא בספר חפ"ן.

d. *Ibid.*, 307.

נמצא בספר חפ"ן דהבי אמר רב פלטוי גאון ראש ישיבה מסור פסול לעדות ולא מבעי' מסור גמור ומפורסם אלא אפי' אינש דסני לחברי' וא"ל בפניו אוילנא ומסירנא לך הו"ל רשע והא דאמרו רבנן לא נחשרו ישראל על כך ה"מ דסני לי' ושתיק אבל היכא דקצווה בפרהסיא דקמזיק לי' פסול לעדות וכן נפסק בב' ישיבות.²⁵⁴

e. *Ibid.*, 852.

כתב בעל החפ"ן אשה שאבדה כתובתה ונתאלמנה או נתגרשה גובה אפי' תוספת ומביאי' ב' או ג' כתובות של קרובותיה ונותני' לה כפחותה מהן ובשבעה וכן המנהג.²⁵⁵

(6) R. Ephraim b. Jacob, *Responsa* of R. Meir of Rothenburg (ed. Lemberg), 318.

ובספר חפ"ן נמצא כתוב שכך נמצא בהלכות פסוקות דר' אבא ההוא חביתא דאשתקיל [ברזי'] אתא עכו"ם סכרי' באצבעתי' אתא לקמיה דרב ואמר מברוא ולעיל אסור בהנאה ומברוא ולתחת מותר בהנאה.

(7) R. Isaac of Corbeil, *Sefer Mišwot Katan*, 82, headed רבינו חננאל פסק בספר חפ"ן שעשה שאפי' אדם שניבע בנקיטת חפ"ן שיש לו התרה לדבר מצוה.²⁵⁶

(8) *Tosafot* Baba meš'ia, 4 a, headed ששת ורב.

אך בספר חפ"ן משמע דהילך חייב.²⁵⁷

²⁵⁴ See above, note 251.

²⁵⁵ See R. Moses of Coucy, *Sefer Mišwot Gadol*, positive precept 48, p. 127 b; *Sefer Mordekai*, Ketubot, IX, 234 (ed. Wilna).

²⁵⁶ See R. Samson b. Zadok, 412.

²⁵⁷ See *Haggahot Maimuniyyot*, *Hilkot To'en we-Niṭ'an*, 4. 1.

(9) R. Samson b. Zadok, חשב"ן.

a. 412.

וכתב שאם נדר אדם לגרש את אישתו יגרשנה ואח"כ יחזור וישאנה
ובשביל שעברו כבר ימים רבים שלא למדו מסכת נדרים ביישיבה החמיר
בשבועות ונדרים. אמנם ר"ח פסק בספר חפ"ן ישעשה שלדבר מצוה יש
לו התרה.²⁵⁸

b. 569.

נמצא בספר חפ"ן הכי קאמר רב פלטוי ראש ישיבה מו"ק פסול לעדות
ולא מבעיא מו"ק נמור ומפורסם אלא אפילו אינש דסני לחבריה ואמר
בפני עדים אוילנא ומזיקנא לך הוי רשע והא דאמור רבנן לא נחשדו
ישראל על כך הני מילי דסני ליה ושתיק אבל היכא דצווח בפרהסיא
דקא מו"ק ליה פסול לעדות והוא הדין לשבועה וכן נפסק בשתי ישיבות.²⁵⁹

(10) R. Mordecai b. Hillel, *Sefer Mordekai*.

a. Yebamot, II, 6 (ed. Wilna).

זוקא לא פקעא בכדי וכן הלכה וכ"פ רבינו הננאל וכן ספר חפ"ן וכן
ישאר הנאוים.

b. *Ibid.*, II, 7 (ed. Wilna).

דרבי חי"א לא איפשיטא אם יש להם הפסק או לא ואולינ לחומרא
ויחלוין וכ"פ ר"ח וספר חפ"ן.

c. Ketubot, IX, 234 (ed. Wilna).

כתב בעל החפ"ן אישה שאבדה כתובתה ונתאלמנה או נתגרשה נובה
אפילו חוספת ומביאין ב' כתובות או ג' מקרובותיה ונותנין לה כפחות'
שבין ובישבעה.²⁶⁰

d. X, 243 (ed. Wilna).

וישאלתם במילתא דאיכא פלונתא דרבוותא אם יש לעשות שודא
דייני לא עבדינן שודא אלא מי שהוא גדול הדור ומומחה לרבים מדאמר

²⁵⁸ See R. Isaac of Corbeil, *Sefer Mišvot Katan*, 8a.

²⁵⁹ See above, note 251.

²⁶⁰ See above, note 255.

ליה ר"נ לרב ששת חדא דאנא דיינא ומר לאו דיינא אלמא רב ששת לא מצי למיעבר שודא אלא ר"נ שהיה דיין מומחה דהלכתא כוותיה בריני ועוד לא עבדינן שודא אלא היכא דאיתמר בהדיא בנמרא והיכא דלא איתמר המוציא מחבירו עליו הראיה ושלום מב"ב וכדברי הר"ם. כך כתב בספר חפ"ן.

e. XII, 265 (ed. Wilna).

וכן כתבתי לעיל פרק הכותב מיטום ספר חפ"ן [בדבר אשה שתבעה כתובתה].

f. *Kiddushin*, I, 488 (ed. Wilna).

והלכתא כרב פפא וכרב שרביא וכו' [דשטר אירוסין צריך להיות מדעתה] אבל בספר חפ"ן פסק כרבא וכרבינא.

g. *Ibid.*, 489 (ed. Wilna).

ובספר חפ"ן פסקו דלית הלכתא כשמואל ובעינן דלהוי הכא ש"פ.

h. *Sanhedrin*, III, 696 (ed. Wilna).

ובספר חפ"ן משמע דאזהב או שונא פסולין לדון כדאמרין פרק שני רייני גזירות.

i. *Makkot*, I, 728 (ed. Wilna).

ובספר חפ"ן נמצא דלא מכשרין אלא היכא דאיכא עדים דלמלו²⁶¹ חתמו.

j. *Glosses to Mordekai*, Yebamot, X.

ובספר חפ"ן תירץ הא דקאמר מפיהם ולא מפי כתבם כשאניו כתב ידם.

(11) R. Meir ha-Kohen, *Haggahot Maimuniyyot*.

a. *Ahabah*, end of *Seder Tefillot*, 4.

ור"ח כתב בספר חפ"ן שאין להזכיר של ר"ח וכן איתא בירושלמי בריש שבועות עבר קומי תיבות' בריש שתא לא אדבר דריש ירחא וקלסוניה וסיים בספר חפ"ן כל הפטור מן הדבר ועושהו נקרא הדיוט.

²⁶¹ See *ספר ראב"ן*, § 30.

b. Hilkot Shekēnim, 3, 5.

וכ"פ ד"ח בספר חפין [שמגלגלין עליו את הכל אם ננדרה הרוח הרביעית של חורבתו].

c. Hilkot Ishshut, 14, 30.

ואי בעי' למיפק משום דאיתמרעת ולא בעי' דלדיר' לה בעל לא דיינינן לה דינא דמורדת וכן בבל הני דכופין אותן להוציא אי מיתת איתתא מקמי ניטא ירת לה בעל וכן כתב בה"ג ובפר"ח ובדברי ר"י אלפס ובשר ח פין.

d. Hilkot Tō'en we-Ni'an, 4, 1.

ודלא כספר חפין ומהדורא בתרא דר"ת שפסק מבאן דהילך חייב.²⁶²

e. Hilkot 'Edut, 11, 3.

כתב בספר חפין שכך אומר רב פלטוי דלא מבעיא מסור נמור אלא אפי' אדם מפורסם ומריב עם חבירו ואמר לו אלך ואמסור ממונך הואיל ומעיו פניו בפרהסיא נחשב רישע ופסול לעדות והוא הדין לשבועה, וכן נפסק דין המסור בשתי ישיבות ס"ה ע"כ.²⁶³

(12) A commentary to a Maḥzor.²⁶⁴

a. Fol. 37 a.

וכן פסק האילפס דאשמש בהו בכלי שני כגון קערות וכיוצא בהן כי שרי עליהן רותחין בכלי שני ומושהו להו בנויהו עד דפלטוי שפיר דמי וכן פסק נמי בספר חפין.

²⁶² See *Tosafot*, *Baba meṣi'a* 4 a, headed ששת.

²⁶³ See above, note 251.

²⁶⁴ I am indebted to Professor A. Marx for his kindness in copying these two passages for me. He also drew my attention to Marco Mortara, *Catalogo dei Manoscritti Ebraici della Biblioteca della comunità Israelitica di Mantova*, Livorno, 1878, p. 36, where the following note occurs in a description of *Responsa* mostly by R. Meir of Rothenburg: 'Molte opere ed autori vi sono citati come il חפין ס' (no. 385, 389, 526) di ר"ח.'

δ. Fol. 38 a.

וכן פסק האלפסי בתוך ע"ז ובסיפוי של גוי שחזתמו חמין בין ביורה
נרולה בין ביורה קטנה מותר דקיימא לן נותן טעם לפנם מותר וכן פסק
רבינו הננאל בספר חפץ וכל הנאונים התירו אפילו בקדירה בת יומא.

(13) R. Abraham (brother of R. Meir of Rothenburg)
in ספר סיני.

VIII

CONCLUSION

In copying this manuscript I have endeavoured to give a faithful reproduction of the original. Even in cases where there was an obvious scribal error I preferred to let it stand in the text and correct it in a note, rather than give the emendation in the text and call attention in a note to the error in the manuscript. I felt justified in doing so, because this is a unique manuscript, and I wanted to give the reader the opportunity of seeing at a glance what is actually there. The best emendation, unless it is independently corroborated, necessarily contains an element of subjectivity, and it is hard to draw a line of demarcation between the certain and the probable, for what may appear obvious to one writer may be considered far-fetched by another. By giving only 'correct' readings the editor unduly influences the reader. In one minor point, however, I have perhaps deviated from the original. I have joined the definite article ל to the following word in accordance with Arabic usage. Now the words in the manuscript are not sufficiently separated from one another, and it is hard to tell what was the copyist's intention in this matter. There are one or two cases, however, where ל is at the end of the line, and belongs

to the word with which the next line begins.²⁶⁵ This would seem to indicate that the copyist considered this particle as a separate word. Owing, however, to the rarity of such cases, I did not deem it advisable to disfigure the text.

My omitting to supply diacritical points over the letters was based on very careful considerations. At first sight it seems strange that there should be a consistency in placing dots over ו and ז, while the other letters are systematically neglected. This characteristic is shared by practically all old Genizah fragments that I examined. That the Jews who employed the Hebrew alphabet for Arabic words adopted a phonetic scheme is evident from the circumstance that خ is represented by כ and غ by ג, and not by ח and י, respectively. They attempted as far as possible to write down the words as they were pronounced. Now we have no means of determining exactly at what period the distinction between some letters differentiated by dots was dropped in pronunciation, but it is safe to assume that this process took place before the Jewish-Arabic period. In colloquial Arabic there is no difference between ד and ז, ט and ת. This at once explains why no diacritical mark was put over ו and ח. Then ג approximates so closely the pronunciation of the hard *g* that Arabs (even in Egypt where ج has the hard pronunciation) in the majority of cases transliterate the hard *g* by غ. European Arabists are sometimes puzzled by such a word as غازيت, which simply represents *gazette*.²⁶⁶ This would accordingly dispense with the necessity of placing a mark over ג. The pronunciation

²⁶⁵ See e. g. text, fol. 4 a, l. 1.

²⁶⁶ Karaite writers who transcribed Hebrew words in Arabic characters employed غ for ג. Thus גנוג = هنوغيغ (G. Margoliouth, 'Abu'l-Faraj Furkan', *JQR*, XI, p. 207, l. 8).

of כ without a *dagesh* coincides with that of Arabic خ, and there was no need to indicate that no *dagesh* was in that letter, just as in unvocalized Hebrew texts that mark is omitted.²⁶⁷ Had they intended to place a diacritical mark over כ, they might have more judiciously chosen letter ח with a mark to represent خ. It is only to represent ض and ظ, which have no equivalents in the Hebrew alphabet, that they were compelled to resort to diacritical marks. Accordingly we have no right to tamper with these texts. It is easy to supply the diacritical points, and to make the language appear more classical. But what benefit would we derive? Our loss is evident; for by altering the text we destroy the only material we possess for the reconstruction of Jewish-Arabic. I wish to lay especial emphasis on this point, for I confess that I attach more value to the linguistic aspect of such texts than to the philosophic or halakic. The reader who is not sure of the values of some ambiguous letters will find sufficient guidance in the translation and notes.

The Hebrew translation follows the original as closely as is compatible with the Hebrew idiom. I did not feel bound to follow the style of the Tibbonites in vocabulary or construction. The Tibbonites have no doubt enriched the Hebrew language, but their conception of the duty of a translator is, to say the least, out of date. Why should one be compelled to write בזה השער merely because the Tibbonites wrote so in conformity with the Arabic construction? The Hebrew idiom is to say כדברך, where in Arabic كقولك would be used. Why, then, should we say כאמרך, which

²⁶⁷ It may be of interest to mention that some old manuscripts place diacritical marks, dots or lines, over ט, כ, and צ, thus avoiding all possible cases of ambiguity.

is an infinitive, and would convey a different idea? Moreover, Hefes mostly had biblical or talmudic expressions in mind, and I thought it advisable to reproduce these expressions as far as possible. This naturally makes the style slightly uneven, for biblical and talmudic constructions occur side by side. To obviate too great a contrast, I refrained from employing the waw consecutive. Hefes invariably introduces biblical and talmudic passages by בִּן and לֵךְ , respectively. The ל of לֵךְ does not mean *because*. It is, to my mind, employed as a technical distinction between biblical and post-biblical passages. Considering the various terms by which this distinction may be expressed in Hebrew, I decided to render בִּן by כִּמוֹ שֶׁבְּחֻב and לֵךְ by כִּמוֹ שֶׁאָמְרוּ . The expression לֵךְ שֶׁאָמְרוּ would certainly not have done justice to the latter. The Tibbonites would, I suppose, have rendered these expressions by לֵאמֹר and כִּאֲמָרוֹ or לֵאמֹרם .

I herewith take the opportunity of expressing my gratitude to Dr. Cyrus Adler, President of the Dropsie College, for his kindness in placing the manuscript at my disposal and for encouraging me in my work. I am also indebted to Prof. Henry Malter for reading the proof-sheets and for some valuable suggestions, to Prof. Louis Ginzberg for locating a few passages for me, and to Prof. Alexander Marx for his promptness in forwarding me books, which I needed in connexion with this publication, from the library of the Jewish Theological Seminary of America.

REMARKS ON THE POETIC FRAGMENTS (*JQR.*, IV, 53 ff.)

IN the new, fourth series of his Poetic Fragments from the Genizah, I. Davidson brings to light a number of very important and valuable poems for which he deserves thanks and recognition. These the serious scholar will never find in the eulogies of superficial readers, but in the vivid interest in his publications manifested by fellow scholars working in the same field, who, through their contributions, assist and help him in his endeavour to present the new texts to scientific investigation in a form as correct as possible. It is this consideration that induces me to write down the following remarks which partly are of a textual nature, partly concern the interpretation of difficult passages, and partly aim to establish the connexion, especially in the first poem, which is attributed to Elḥanan b. Shemaryah (pp. 53-60). On this poem I wish to remark the following¹:

l. 4 read קנה (Prov. 16. 16), and נער נָצַר (comp. Prov. 3. 21), both as infinitives.

ll. 12-13 read . . . רָמִים . . . מַעֲבֵר; for the explanation comp. b. 'Erubin 55 a: לא בשמים היא לא תמצא בנסי רוח ולא מעבר לים. היא לא תמצא לא בסחרנים ולא בתגרים.

ll. 15-16, comp. b. 'Aboda zarah 19 a: כתיב בראש מרומים. וכתיב עלי דרך בתהילה בראש מרומים ולבסוף עלי דרך. The connexion with the preceding is clear: Blessed is he who devotes himself to the Torah (ll. 1 ff.), and thus endeavours to escape the punishment which is reserved for those who turn away from the holy tradition, i.e. the Torah (ll. 8-9), because she requires great assiduity and painstaking effort, and hence does not reveal herself to those who are addicted to commerce, behave haughtily, and

¹ These remarks were placed in the hands of the Editors before the appearance of the notes of Dr. Poznański in *JQR.*, N. S., IV, 481-3.

seek only their own advantage (ll. 10-14), but loudly calls those who call her and endeavour to explore her (ll. 15 ff.). — The poet starts to speak of the law-abiding in the singular, which is conditioned by the verse from Prov. 3. 13 placed at the head of the poem, but from l. 17 on he employs the plural, the departure being made possible through the words *במשכימים שבת מאחרים* (l. 16; comp. Ps. 127. 2).

l. 18, comp. Isa. 45. 3.

ll. 19-20, comp. b. Baba batra 8a: *אלו . . . לרנליך*. והם תכו לרנליך חכמים שמכתתין רגליהם מעיר לעיר וממדינה למדינה ללמוד תורה יצא מדברותיך לישא וליתן בדיבורותיו של מקום.

ll. 21-2, comp. b. 'Erubin 21 b: *שחורות . . . קוצותיו תלתלים*. בעורב . . . במי שמושחיר פניו עליהן בעורב.

ll. 23-4, comp. Yalkut on Ecclesiastes 12. 11: *הן נטעים*; comp. במסמרות כיון שבעל תורה נכנס ללמוד והם מתאספים לשמוע. *Kohelet rabba ad loc.*

ll. 25-6, פארים = פארות = פארים, branches, offspring; for *נשהורי המורים* I would like to read *נשהורי המורים*.

l. 29, *זורי* is connected—by a clever allusion to Ps. 85. 4—with the preceding: that they escape the snares which the misguided malefactors have spread out (see Prov. 1. 17). Accordingly also here the connexion is clear. The misguided malefactors are perhaps the Karaites; comp. the following note.

l. 34, comp. p. Peah 2. 6: *אכתוב לכם רובי תורת וכי רובה*: של תורה נכתבה אלא מרובים הן הדברים הנדרשים מן הכתב מן הדברים הנדרשים מן הפה. The poet accordingly inveighs against those who oppose the deduction of rules and maxims from the written Law by means of hermeneutic principles, hence against the Karaites.

l. 35, *זכורים* perhaps simply: they brood, write, and deviate from the right path.

ll. 37-8, read *למורו* for *למורו*, and *סיני* for *סיני*. The meaning is as follows: The rebellious children deny what they have learned from their parents; the created (the children) tear down the fence which the creators (the parents) have erected.

ll. 39-40: They are strengthened in their godless behaviour

by the circumstance that they succeed in everything, that the earth belongs to them (according to Job 15. 19), that their fields are free from thorns, and their wine, oil, and perfume remain without dregs or lees, while the noble are exposed to all manner of trouble and danger (ll. 41 ff.). But despite their adversities the latter are not shaken in their pious belief and holy deeds (ll. 45 ff.). Thus also here the connexion is quite clear.

l. 43, comp. *היו כורכין כל אחד בספרו וישורפין אותו* in the narratives of the ten martyrs (e. g. in *מדרש שם"ש*, ed. Grünhut, Jerusalem, 1899, p. 3 b); Ps. 37. 20.

l. 44 read *מְהָרִים* for *מְהָרִים*; the explanation is to be found in Ps. 44. 19 and 21.

l. 46, comp. *אנשי סעו המה למנוחות* in the well-known *Seliḥa* *אנשי אמונה אבדו*. That *לנצרים* is written in the manuscript without ו (after צ) is sufficient proof that the word is to be vocalized *לְנִצְרִים*, as plural of *נֶצֶר*, sprout, here: children, offspring; to be explained in accordance with Ps. 17. 14.

ll. 47–50 seem to depict the welfare of the children who enjoy the merits of their parents. For them the poem is designed: by pointing out their strong, upright, pious, and law-abiding parents, whose merits are of avail to them, these young people should be spurred on to love the Torah and tradition, to lead a pious life and exercise noble deeds.

ll. 51–2 resume the thought of l. 46, and the following lines emphasize the fact that the blessings enjoyed by the children correspond to the merits of their pious parents.

l. 52, *להם* is to be deleted, since the lines consist of six words each (two parts of three words each). An exception constitutes l. 1 a only, because a verse from the Bible is quoted *verbatim*.

With regard to the fragment of a divan by Solomon Ibn Gabirol on pp. 60–77 (such a fragment forms also Israel Levi's manuscript which is mentioned by me in *MGWJ.*, LV, 83), I wish to add the following:

No. 122 (p. 65), l. 1: I cannot agree with Davidson's interpretation, and think therefore that—since *כאב* is written without ו after א—we should read *כְּאֵב צָרִיָּה* and consider it a reversed

genitive=כְּאַבְהָהּ, a pain for which there is no healing balsam; the higher it (the pain) ascends—i.e. the more vehement it becomes—the lower my heart descends.—l. 2 read עָרַב as demanded by the *jeu de mots*. לָמוּ of the manuscript seems to be better than לְמוֹל (MS. Oxf.).—l. 4 I would prefer to read with MS. Oxf. וּבֹל for וְעוֹד, and with Davidson הַכָּאב for the doubtful הַכּוֹב, but וּבֹל for וּבֹל (Oxf. וּבֹל):

אֲבָהָהּ וּבֹל אֲבָהָהּ לִבִּי תָמוּת דְּמָעָה בְּעֵינֵי הַכָּאֵב חִיָּה

'I weep, and the more I weep the pain animates my tears, so that they may not die out in my eyes' (that they may not cease).

No. 123 (p. 67), line 2 should read:

וְנִהְרְסוּ שְׁתּוֹת בְּתֵיבָן וְאֵבֶן עֲרָנִי נוֹשְׁנֵי הַיּוֹם וּבֹל

comp. Gen. 18. 12.

No. 124 (p. 68) offers some good readings, with the exception of שְׁטַפְפִּי (l. 5).

No. 125 (p. 69), l. 3, read יַכְבֵּר for יַכְבֵּר; this is supported by the interesting parallel in Samuel ha-Nagid's poem הנרפא הוֹמֵן (Harkavy, p. 72, no. 36; in my edition, part 1, no. 13), verse 6: חֲמוֹסִי עַל לִבִּי כִּי בְיוֹם בּוֹ כְּהוֹל יַכְבֵּר וְלֹא אוֹכֵל שְׂאֵתוֹ.—l. 6, by mistake the faulty text is given above, while the correct text is quoted below in note 70 as a wrong reading of the manuscript. לֶךְ אוֹמֵר, לֶךְ is metrically correct, and may furthermore be explained by Prov. 10. 14; 13. 3; 18. 7: 'Thee I tell, thou man of mischievous lips, &c.'; on the other hand לֶךְ אוֹמֵר מְחַתֵּה is metrically incorrect, and yields no sense whatever in the passage before us.—l. 13 read מוֹסְלָעִים וּיוֹצִיא מוֹסְלָעִים.—l. 18, מְמַדְדוֹת.—l. 33, שְׂרִים וְשָׂרוֹת (2 Sam. 19. 36; Eccles. 2. 8).

No. 126 (p. 71) offers numerous variants which cannot be examined here. I note only that the proposed emendation in note 87 to l. 9 is impossible both metrically and materially; לְבָלוֹת seems to me acceptable.—l. 11 read בְּשִׁחוֹת (וְשִׁחוֹת) וְשִׁחוֹת.—l. 15, מְהַרְוִסִּיהָ and מְהַרְוִסִּיהָ וְנִבְלוֹת.

A welcome gift form the two fragmentary poems by Joseph Ibn Sahl, the first of which suffered considerably. l. 3, read עָלִי

for על.— ll. 5-6 the comma is out of place ; read תִּגִּיל וְתִיל.— ll. 7-8, כִּרְיִיה, which is there only to fill up space and has no bearing on the sense of the verse, is problematical ; perhaps it should be מַהֲרָה ; פְּרִיָּה is wrong and should be תְּנוּמָה ; וְתִשְׁכַּב is a miswriting of וְתִשְׁכַּח, while the lacuna is to be filled up with חֲבִלָּה ; the result being :

לֹא יֵשׁ רְצוֹן אֶל וְחֲלָבָר מִתַּהֲרָה בָּמוֹ חֲבִלִי תְנוּמָה וְתִשְׁכַּח אֶת חֲבִלָּהּ

The verse does not refer to the sun (note 20), but to the eye ; חֲבִלִי and חֲבִלָּה is a play on words. — ll. 9-10, יִרְיִיה is impossible, for it would be against the metre, since the first word of the following line—in my estimation וְהוּא—still belongs to the first hemistich. נָטַע יְמִינֶךָ is no doubt נָטַע יְמִינֶךָ (according to the other reading נָטַע יְמִינֶךָ) ; אֲרִי is correct as imp. fem. (referring to נִפְשִׁי) of אֲרִיה (Cant. 5. 1). I read accordingly :

מִהֲתַבֶּךְ נִפְשִׁי עָלַי פְּרִיד יְרִידָהּ וְהוּא נָטַע יְמִינֶךָ אֲרִי מְגֹד שְׂתִילָהּ

i. e. 'Why weepest thou, my soul, at the separation of thy friend? Thy right hand has planted the plant, therefore pluck the fruit of its (thy right hand's) shoots' (=thou thyself hast brought the grief upon thee ; thou shouldst not have devoted thyself so much to thy friend!). — l. 11, נֹם (sleep) is correct ; as to the metaphor comp. *Dīwān des Jeh. ha-Levi*, vol. I, Notes, p. 205 (to no. 87, ll. 21-2).

In the second fragment, which forms a remnant of the poem whose opening verse is cited by Moses Ibn Ezra (Davidson, p. 78, n. 10), l. 1, חֲמִדּוֹךְ=envy ; comp. *op. cit.*, vol. I, Notes, p. 332.— l. 4 we cannot read שְׂמַחָה, as borne out by שְׂנֵתָם in the following line, but it also seems venturesome to construe וְהָאָרֶץ in the sense of וּבְנֵי הָאָרֶץ. I suggest a miswriting of וְדוֹרִיד. — l. 11, בּוֹה. sc. בּוֹלֶשֶׁן ; וְזֶה (=וְזֶה), sc. לִבָּב. — l. 12 read אִזְּ בֵּר for אוֹבֵר, and delete note 36.

As to the poems of Joseph Ibn Zaddik (pp. 82-91), Davidson should have considered that the superscription of the second poem precludes the assumption that also the first belongs to Ibn Zaddik. In reality the latter is the work of Judah ha-Levi, and is printed in my *Dīwān*, vol. II, p. 29, no. 26. However,

the publication of a text containing new readings is very welcome. — In the second poem, l. 1, read לְהִלִּי. — The question whether the third poem is to be ascribed to Joseph Ibn Zaddik or Abraham Ibn Ezra must remain undecided. To l. 19 comp. my conclusions in the *Diwān*, vol. I, Notes, p. 29.

Finally, a few remarks to the poem of Joseph b. Shesheth (pp. 91–5): l. 6 is to be completed by צְמוּדִים, and l. 8 by פְּהָרִים (Job 15. 21). — l. 13, הִנֵּי is an affirmation (comp. my *Diwān*, I, Notes, p. 198), hence delete the interrogative sign. — l. 17, read נִטְרַד for טָרַד. — l. 24, מִשְׁנָאִים for הַשְׁנָאִים.

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Prag.

ADDITIONAL NOTES TO 'TWO GAONIC FRAGMENTS'

JQR., IV, No. 3

WITH reference to the Sheeltot fragment (pp. 420-21), it should be remarked that this sheelta still lay before the author of the Ittur; comp. Ittur I, קרושין 2, ed. Ven., fol. 109 a: חוקת' בפי' גרסינן אמ' אמימר תלוה בו' שלא כהונן ורב אחא (p. 421, ll. 6-9=) ובעל הלכות (Hal. Ged., B. Batra, ed. Ven., fol. 102 b=) לא פסקו והלכתא. *h. e.* they both carried on the discussion, but did not, as usual, render a decision: . . .

Also to the fragment of the Hal. Pesukot (pp. 423-33) it should be remarked that Ittur, קנין, ed. Ven., fol. 5 a, quotes our p. 428, ll. 36-38, in the name of R. Jehudai, *h. e.* of his Hal. Pes.: ורב יהודאי ובעל הלכות כתבי גבי סאה בסאה והא אמרי רבנן קנין ברבית לא מהני בו'.

To p. 435, n. 11, comp. Weiss, דור דור ודורשיו, IV, 14 and 29, n. 4 (sixth edition), and Aptowitzer, *Monatsschrift*, 1911, 371 (to p. 20).

The passage יכול אדם לפטור בו', as my esteemed friend Dr. Aptowitzer informs me (see his remark in *JQR.*, 1907, p. 607, n. 6), is preserved in *Hal. Ged.*, ed. Warsaw, 222 a; ed. Berlin, 435. More in this connexion will be found elsewhere.

To p. 436, n. 39, comp. also Midrash hagadol 522: במאה . . . במאה נקין, Gen. r. c. 79, 7, erroneously אונקיות, read נקיות, as rightly suggested already by Reifmann in *תלמוד* בית, II, 218.

Unfortunately also a few misprints have crept in:

p. 421, l. 2, read דקמיט.

p. 422, l. 3 from below, read halakot,⁸¹.

p. 423, l. 1, delete ⁸¹.

p. 423, l. 14, read לִי הָכִי instead of כִּי לִי.

p. 428, l. 33, read אֵלֶּכָּה.

p. 429, l. 2, read מֵתָלִי instead of מֵתָלִי.

p. 430, l. 26, read וְשִׁמּוֹ instead of וְאִמּוֹ.

p. 435, n. 7, read (=נְּ).

p. 440, n. 154, read הוּהָ.

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RECENT JUDAICA AND HEBRAICA

- Die Mischna Berakot (Gebete)*: Text, Übersetzung und Erklärung, nebst einem textkritischen Anhang. Von D. OSCAR HOLTZMANN, a. o. Prof. d. Theologie an der Univ. Giessen. Giessen: ALFRED TÖPELMANN, 1912. pp. viii + 106.
- Die Mischna Pesachim (Ostern)*: Text, Übersetzung und Erklärung, nebst einem textkritischen Anhang. Von D. Dr. GEORG BEER, o. Prof. d. Theologie an der Univ. Heidelberg. Giessen: ALFRED TÖPELMANN, 1912. pp. xxiv + 212.
- Der Tosephtatraktat Berakot*. Text, Übersetzung und Erklärung. Von D. OSCAR HOLTZMANN, a. o. Prof. d. Theologie an der Univ. Giessen. Giessen: ALFRED TÖPELMANN, 1912. pp. xvi + 99.

Under ordinary circumstances one would have been glad to welcome the attempt of non-Jewish scholars to present their point of view in the exposition of the text of the Mishnah. Jewish scholars whose religious practices are regulated by precepts supposed to be derived from the Mishnah are apt to overlook difficulties. An 'outsider', however, who wishes to understand the Mishnah will draw attention to these difficulties, and perhaps succeed in pointing out the way to the correct solution. From this edition of the Mishnah, projected by Holtzmann and Beer, good results might have been expected, as such leading theologians as Marti and Nowack, who have done splendid work in the exegesis of the Old Testament, are to be among the contributors. The first two volumes, however, that have been published, *Berakot* and *Pesachim*, edited by Holtzmann and Beer, respectively, are rather disappointing. In their prospectus the editors grandiloquently expatiate on the pioneer work they are doing. This in itself is an intentional slur upon the work of their predecessors. The Mishnah has been studied with unabated zeal

since its redaction up till the present time, and the best minds of the Jewish race have been devoted to its elucidation. At the best, modern scholars can only attempt to add something to that which is already known about the Mishnah.

Prof. Holtzmann's introduction to the tractate *Berakot* is a lengthy discussion on Jewish liturgy. There is hardly anything new in it, and the author should certainly have referred to Jewish writers who have treated of this subject and to whom he is entirely indebted. It can by no means lay claim to original research, though it is a lucid account of the subject, and will be of service to beginners. Only a few pages are devoted to the tractate itself.

The vocalization of the text is on the whole well done, but can certainly be improved in many places. In some paragraphs there are grammatical slips such as אֲרִיזָה (I, 4) instead of אֲרִיזָה and קָרִית (II, 5 a and *passim*) for קָרִית. The consistent punctuation of קָה is scarcely defensible. There are also a number of errors which can only be accounted for by an imperfect knowledge of Hebrew, as, for instance, וְיָרִיתִי (I, 5) instead of וְיָרִיתִי and בְּעֵין (IV, 3 and many other places) for the traditional בְּעֵין. In his *Textkritischer Anhang* he states that the punctuated texts have בְּעֵין, *aber dem Sinn und der Form nach ist dieses Wort stat. constr. von בְּעֵין und nicht aus בָּן und עֵין zusammengesetzt*. Had Prof. Holtzmann considered the usage of בְּעֵין and the exact meaning of עֵין in this connexion, he would have spared us his original suggestion. The notes are full on theological matters, but are inadequate from the philological point of view. A note which will commend itself to the consideration of scholars is on אִם לֹא עָשָׂה מְעֵשָׂה (II, 5 a), which Prof. Holtzmann takes literally: *wenn er Arbeit nicht tut*. The current explanation is that this phrase is a euphemism; but the writer observes: *das Judentum setzt keine Belohnung darauf, dass ein Bräutigam seine Schuldigkeit möglichst lange nicht tut*.

If Prof. Holtzmann can be blamed for not giving due credit to the work of Jewish scholars, Prof. Beer is certainly guilty of an unsympathetic attitude towards the whole subject. This in a measure disqualifies him from doing the work scientifically, for

his prejudices prevent him from grasping the true meaning of certain customs. Strack's success in talmudic literature is no doubt due to the sympathy with which he approaches his subject. But Prof. Beer speaks of him in a derogatory manner, because, as is explained, he follows the Rabbins *und findet darum vor allem in der jüdischen Presse fortgesetzten Beifall* (p. vii).

The introduction extends over 109 pages, and deals with the history of the Festival of Passover in all its phases. Had it not been marred by anti-Jewish remarks, it would have been a valuable contribution, for Prof. Beer has collected all material dealing with Passover observances throughout all ages. In consequence, however, of these prejudices he sees everywhere Greek and Roman influence. According to him מְרִאשׁוֹת may be a direct translation of the Greek προσκεφάλαιον (p. 66)! He quite overlooks the fact that this word occurs in Gen. 28. 11, where no Greek influence is possible. Nor does his suggestion that in the benediction on wine there is a relic of libation to the deity (p. 75) deserve any consideration. A base accusation is his statement that the crucifixion of Jesus was a sacrifice: *ein Reinigungsoffer für das Volk und auch ein Opfer zwecks Erlösung aus der römischen Herrschaft, um deren baldiges Aufhören ja die Juden in der Paschanacht damals beteten* (p. 95). He bases this view on Robertson Smith's statement in his *Religion of the Semites* that in olden times the execution of sinners took the form of a sacrifice. But, surely, Smith speaks there of the early Semites, and how could this be reasonably applied to practices of the Second Temple?

Having had before him the editions of Baneth and Strack, Prof. Beer had a very easy task in dealing with the text and the notes. Nevertheless there are a number of errors in interpretation and vocalization. A few examples will suffice. עֵינֵי (III, 8 a) should be עֵינֵי, as the Piel has quite a different meaning (cp. Judges 3. 26 and 1 Kings 6. 21). The phrase אֵינָהּ הִיא הַמִּזְרָה (I, 7 b) can only mean *this is not the principle* or *standard*. Beer translates: *das ist keine richtige Entscheidung*. In his note, instead of explaining this phrase, he makes the following scholarly

and scientific remark: *Tant de bruit pour une omelette!* Der ganze kleinliche Streit dreht sich darum, ob zum Verbrennen bestimmte reine heilige Gegenstände zusammen verbrannt werden dürfen mit unreinen Gegenständen! He also vocalizes with a definite article in cases where an undetermined noun is meant. Such punctuation as בֹּסוֹת שְׁלֵי (X, 1 b) is syntactically inadmissible.

Prof. Holtzmann's edition of the Tosephta Berakot is inferior to his edition of the Mishnah. Whereas the text of the latter is edited tolerably well, the former is teeming with errors. This is to be accounted for by the circumstance that the Jews did not study the Tosephta with the same assiduity as the Mishnah, as for halakic purposes the former is of secondary importance. Of course, this fact does not sound complimentary to Prof. Holtzmann's pioneer work. His short introduction is marked by the absence of any attempt to acquaint the reader with the problems involved in the study of the Tosephta, especially in its relation to the Mishnah. According to him the Tosephta is a kind of an early commentary on the Mishnah. Students of the various problems will not find it necessary to refute this view. Nor will any one take seriously the statement that *Gemara* means *Vollendung* (p. x).

The errors in the text are of various kinds, and some of them could have easily been avoided, had the editor possessed an adequate knowledge of Hebrew grammar. There is no necessity to enumerate them all here, but I shall select a few characteristic examples. מְלֵא כָל-הָאָרֶץ (Isa. 6. 3) becomes with Prof. Holtzmann מְלֵא כָל וְכו' (I, 9 b). He may have had the inclination of improving Masoretic Hebrew, but he should have at least notified the reader. The vocalization תְּרַעֶיָה (I, 11) violates an elementary rule of Hebrew grammar, and had the editor read his Bible carefully, he would have known that the correct form is תְּרַעֲיָה (Isa. 43. 19). חִיבָה (I, 14) is impossible, since the root is חָבַב. The correct form is חִיבָה. The Pu'al participle plural is מְטוֹנְפִין, not מְטוֹנְפִין (II, 17). For the impossible הַפְּרִיִּית read הַפְּרִיִּית (III, 3 b). In the book of Esther (5. 6, &c.) we find the form בְּקִשָּׁה, and Prof. Holtzmann can certainly advance no cogent reasons why

he should vocalize בְּקִשְׁתֶּם (III, 7). In Hebrew there are two words חֵל *profane* (from חָלַל) and חוֹל *sand*. Prof. Holtzmann is apparently unaware of this distinction, as he has חוֹלֵי שָׁל מוֹעֵד (III, 10, 11) instead of חֵלִי. Luckily he does not render it by *sand*, perhaps because he has no illuminating theory about sand, as he has about the divine appellation *Jeja* (יֵה). The perfect Pi'el is בָּרַךְ, not בָּרַךְ (IV, 8 c, twice). *To enter* is לָבֵנָם, not לָבֵנָם (IV, 8 d). The form מְוֹלוֹת next to כּוֹכְבִּים (VII, 6 b) may puzzle an innocent reader. Any Hebrew dictionary would have told the learned theologian that according to 2 Kings 23. 5 the correct form is מְוֹלוֹת. The vocalization תַּאֲמַרְנָה (VII, 7 a) instead of תִּאֲמַרְנָה is a splendid display of the knowledge of Hebrew conjugations. הָא (I, 15 b) belongs to the following clause, not to the preceding. בָּרַךְ יְיָ בְּיָמֵינוּ (II, 7) goes with לֹא יִתְפַּלֵּל, not with מִכֶּן, and it simply means *in any case*. הֵלֵלִי (IV, 5 a) should be הֵלְלִי *these*. Had the editor studied carefully the preceding paragraph, he might have known that הֵלְלוּ corresponds to זו. The imperative, *praise*, is certainly out of the question.

Der babylonische Talmud. Nach der einzigen vollständigen Handschrift München, Codex Hebraicus 95, mittelst Facsimile-Lichtdrucks vervielfältigt, mit Inhaltsangabe für jede Seite und einer Einleitung versehen. Von HERMANN L. STRACK. (Two volumes.) Leiden: A. W. Sijthoff, 1912. foll. 577.

Der babylonische Talmud. Nach der münchener Handschrift Cod. Hebr. 95, mittelst Facsimile-Lichtdrucks. Herausgegeben von HERMANN L. STRACK. Einleitung. Leiden: A. W. Sijthoff, 1912. pp. xliii.

In spite of the fact that the Babylonian Talmud is the principal authority for the religious life of the Jews, and is assiduously studied by millions, no critical edition thereof has as yet appeared. It is true that it is reprinted exceedingly often at the various centres of Jewish learning, but even the

most improved editions lack accuracy, and the notes contributed by ingenious Rabbis can seldom be seriously considered. This state of affairs is, no doubt, to be ascribed to the circumstance that by far the greater bulk of talmudic students have scarcely paid any attention to the linguistic characteristics of the Talmud. To them this study is merely a fulfilment of a duty towards their Creator and a source for the knowledge of religious observances. Their aim is to find out the depth of the meaning of all the passages and to reconcile contradictory and conflicting statements. It is quite immaterial whether a noun has one termination or another. And orthography certainly does not deserve a moment's thought. What difference could it make whether we write רבא or רבנא, as long as we know what Raba intended to convey? There is no harm if R. Eli'ezer and R. El'azar are confused, since 'both are the words of the living God'.

This attitude towards the Talmud, defensible though it is from the point of view of the pious Rabbi, has been detrimental to the scientific study of this vast subject. Owing to the careless handling of linguistic peculiarities by printers, a good deal of the grammatical traces have been obliterated. Grammarians have found the printed editions of the Talmud 'a broken reed'. No rule could be established unless it was corroborated by independent evidence.

In modern times, however, the Talmud has been approached from a scientific point of view. It thus became a study for its own sake in a new sense. Owing, however, to the peculiar circumstances under which the Talmud was transmitted, we have little material from which to derive accurate knowledge. There are no data to determine at what time the Talmud was committed to writing. The first complete copy of which mention is made is that which was written down from memory by the exilarch Natronai b. Hakinai for the Spanish Jews towards the end of the eighth century. It is not unsafe to assume that the commitment to writing of the Babylonian Talmud coincided with the time when Aramaic was about to cease to be the vernacular of the majority of Oriental Jews. All these considerations indicate the amount of

caution with which the investigator is to approach the Talmud. The difficulties are still enhanced by the paucity of MSS. It is also to be noted that quotations in the writings of early Jewish Halakists seldom agree verbatim with the printed editions. It is true that these quotations are usually from memory. It is, however, a remarkable fact that, whereas quotations from tannaitic sources are practically identical with the printed editions, talmudic passages are full of discrepancies.

Bearing these points in mind, it is scarcely to be wondered at that the MS. of the Babylonian Talmud in the Munich library is looked upon as a veritable treasure. It is the only existent MS. which contains almost the entire Talmud. It dates from the middle of the fourteenth century, a fairly old date for Jewish MSS., centuries older than the earliest MS. of the entire Bible. As may be expected from a work of this magnitude, the MS. is not free from errors, some of which are due to the ignorance of the copyist. But this hardly detracts from its value. Full descriptions of this MS. have formerly been furnished by Haim Joseph David Azulai in his *Shem ha-Gedolim*, Steinschneider, Lebrecht, and Rabinovicz. The latter did some excellent service for the scientific study of the Talmud by collating the MS. with the printed editions. His *variae lectiones* or *Diḳduḳe Soferim*, as it is more familiarly known, gives all known variants in Orders I, II, IV (without Abot), and Zebahim and Menaḥot of the fifth Order. These tractates are covered in fifteen volumes of Rabinovicz's gigantic work. Ehrentreu published a sixteenth volume containing all the variants in Ḥullin.

The problem how to make this valuable MS. accessible to all talmudic students has often presented itself. For scholars who lived outside Germany seldom, if ever, had the opportunity of studying this unique source at first hand. It has also been observed by competent authorities that in spite of Rabinovicz's careful and painstaking labour, the Munich MS. needed re-examination in many details. Moreover, the MS. itself could not be expected to remain in good condition for ever, especially

as it is frequently handled by various scholars. To print a copy of it would entail a tremendous amount of labour, and mistakes would be unavoidable.

The advance of artistic photography has helped to solve this problem by making it possible to give a faithful reproduction of this MS., and the firm of Sijthoff in Leiden deserves credit for the perfection of the work. No pains were spared to make the facsimiles as artistic as possible. The two sumptuous volumes will indeed be an ornament in every first-class library.

Prof. Hermann L. Strack, the enterprising editor, is to be congratulated on having seized the right opportunity and carried out successfully this monumental task. The care and attention he bestowed upon this undertaking are evident on every page. Being one of the foremost systematizers of Jewish science, Prof. Strack provided the photographic reproductions with some advantages which make the use of the facsimiles more convenient than the original. The writing of that MS. is rather small, and the facsimiles were therefore enlarged by one-fifth. As is well known, all the printed editions of the Babylonian Talmud since the sixteenth century have adopted a uniform system of pagination which differs from that of the Munich MS. In order to avoid confusion and to facilitate the task of finding passages, Prof. Strack, with his characteristic foresight and methodology, marked by dividing lines in the text, and indicated on the margin, the places where pages begin in the printed editions.

The small volume accompanying the two large volumes of facsimiles contains a succinct introduction dealing with all points appertaining to the MS. and its owners. It also gives a concise bibliographical sketch, as well as an account of the copyists. In the codex some parts of Pesahim, Ketubot, and Menahot are missing, and the editor has done well in including them in this volume. These supplementary passages are based as far as possible on other MSS.

Die Urkunden im Talmud. Zusammengestellt, erklärt und mit den Ausgrabungen verglichen. Von Dr. LEOPOLD FISCHER. Berlin: MAYER & MÜLLER, 1912. pp. x+157. (Reprinted from *Jahrbuch der Jüdisch-Literar. Gesellschaft*, IX.)

Mishnah, a digest of the basic principles of the early Jewish jurisprudence. *Baba Mezhiah* (*Middle Gate*), Order IV, Treatise 11. Translated and annotated by HYMAN E. GOLDIN, LL.B., of the New York Bar. New York and London: G. P. PUTNAM'S SONS, 1913. pp. viii+205.

It has long ago been recognized that documents offer the most reliable material for the study of legal institutions and internal life of a nation, as they usually represent actual facts which speak for themselves. In the Talmud documents of this nature are extremely rare, but there is no doubt that the formulas which the talmudic authorities prescribe for documents are of almost equal importance. For in them we are often able to detect the development of legal enactments, which are as a rule the result of practical experience.

Dr. Leopold Fischer, who undertook to explain these documents and formulas, has acquitted himself very creditably of his task. His chief merit, apart from having collected all the formulas that are scattered throughout the Talmud, lies in his making extensive and intelligent use of the commentaries on the Talmud as well as of the legal codes, not neglecting even later authorities. The author shows a thorough acquaintance with this vast literature, and is quite master of his subject.

The comparisons made with the Aramaic papyri, recently discovered in Egypt, and similar documents are very instructive. Genizah documents which have been published as far as now are also fully discussed by the author. In this respect, however, more work will have to be done when the documents, now stored up in libraries and private collections, will have been published.

In his preface the author says that for typographical reasons he was unable to adopt the current system of transcribing Hebrew letters. This is, however, no excuse for writing

Tossaphoth (p. 96, note 1 and *passim*), Tossephta (p. 98, note 3), and Anan = אָנָן (p. 146, l. 8).

Mr. Goldin's aim in translating the Mishnah of the tractate Bābā Mešā'a is to give the English reader some idea of Jewish jurisprudence. His point of view is accordingly that of a jurist rather than that of a philologist. On the whole, the translation makes a good impression, and some of the legal terms are successfully rendered. In a number of instances, however, there is a lack of philological accuracy and precision. Chapter ii, Mishnah IX, and Chapter iv, Mishnah I, hardly do justice to the original, though, in his notes to these paragraphs, Mr. Goldin shows that he grasped the purport of the text. There is also a number of parenthetical sentences which unnecessarily interrupt the translation. Thus the remark that a certain view does not prevail (see p. 144) should have been put in the notes.

Some chapters are preceded by short introductions which give a *résumé* of the contents. The author tells us that he has prepared a general introduction to this treatise 'to prove that there was a certain unity of thought in the mind of the redactor of the Mishnah when he embodied in the present treatise the various branches of the law'.

The copious and extensive notes attempt to assign reasons for every decision arrived at in the text, but textual explanations are entirely excluded. The bulk of these notes are excerpted from the Gemara as well as from commentators and early codifiers, such as al-Fasi and Maimonides.

Although the form of the translation is a popular one, Mr. Goldin would have lost nothing had he taken more care in transliterating Hebrew words. Such forms as *Kama*, *Kidushin*, *Meziah*, and *Perutha* are inexcusable.

Mose ben Maimon's Mischna-Kommentar zum Traktat Baba Bathra (Kap. I-IV). Arabischer Urtext mit hebräischer Übersetzung, Einleitung, deutscher Übersetzung, nebst kritischen und erläuternden Anmerkungen. Von Dr. JACOB SÄNGER. Berlin: M. POPPELAUER, 1912. pp. 86 + 37.

Editors of Maimonides's Commentary on the Mishnah are in good company, for such foremost Arabists as Barth and Derenbourg edited the Commentaries on Makkot and Ṭeharot respectively. Although this Commentary is of vast importance for the elucidation of the Mishnah, no uniform edition of the original Arabic has hitherto appeared, and, with the exception of Derenbourg's edition of Ṭeharot, only stray pamphlets containing the whole or part of a single tractate are now and again published. The present publication, together with that of Dr. Immanuel Lewy which appeared in 1907, completes the tractate Baba Batra.

The task of editing this Commentary is not very arduous. Maimonides wrote this work for Talmudists who are familiar with the legal terminology of the Mishnah. Hence he did not attempt to render these expressions into Arabic. Often entire sentences are left in their Hebrew form. In this respect Maimonides differs from the earlier Arabic-speaking Halakists like Sa'adyā and Samuel b. Ḥofnī who gave Arabic equivalents for almost every Hebrew term. Due to this circumstance only a small number of words is employed in this Commentary. Moreover, the Hebrew translation, though faulty in many cases, is of very great help to a careful editor. In spite of these facilities, the results of this edition are very poor. Dr. Sängér seldom takes the trouble to harmonize the Arabic original with the Hebrew translation, or to point out their differences. In his *Einleitung*, which is nothing more than a mere preface, he says that in improving the Hebrew translation and in preparing the German rendering he followed the advice given by Maimonides to Samuel Ibn Tibbon. Dr. Sängér might have had the intention of doing so, but he certainly did not carry it out. His improvements of the Hebrew amount to nothing. On p. 1 of the text (see note 3) he alters **הַחֲצֵר הַזֹּאת** into **הַחֲצֵר הַזֹּאת**—he quotes Gesenius-Kautzsch to support this correction!—but leaves the inaccurate and awkward expression **וְנִתְּרָה בָּל אַחֵר מִשְׁנֵיהֶם בְּרוּחַ פְּלוּנִי** uncorrected. Nor is he consistent, for constructions like **הַחֲצֵר זֶה** are abounding in this edition. On p. 31 of the text (see note 165) there is a specimen of Dr. Sängér's

Hebrew which leads one to doubt whether he is qualified to improve a Hebrew text. In this passage he misunderstands the meaning of **וַיֵּאָדָה** which simply denotes *addition* and ought to be rendered by **לְהוֹסִיף**, and not by **מַטְוִיבָה**.

The notes are deplorably inadequate. They deal mostly with the text of the Mishnah rather than with the Commentary. One cannot see the need of expatiating on such words as **אָרִיס**, which every lexicon explains satisfactorily. On the other hand, he fails to comment on **בִּינָה** (p. 23), in the sense of *witness*, and **נָאֵב** *he brought* (*ibid.*) which is a vulgar contraction of *jā'a bi*. A very interesting expression is **תְּנִיב אֶלְאָרֶץ** (p. 6) *the earth will produce*. An Arabic stylist would have used the word **תִּנְבָּה**. This **נָאֵב** may be the ordinary vulgar word just referred to, or may have the classical signification (fourth conjugation) *he answered*, and be a translation of **הָאֶרֶץ תַּעֲנֶה** (Hos. 2. 24). The first explanation is more likely in this case.

The number of misprints is tremendous both in the Hebrew and the Arabic. Misspellings like **הַקְרָאוֹת** (p. 6) and **תְּבוּעוֹת** (p. 21) are to be met with very frequently. As there is no list of corrections, it is hard to tell which are printer's errors and which are to be ascribed to the MS. This is the case with **פָּחוֹת** (p. 4, l. 2) instead of **פָּחוֹת**, and **תִּתְבַּעַ** (p. 34, l. 23) instead of **תִּתְבַּחַ**. Besides these errors there is a considerable number of wrong interpretations. The word **שְׂרִיָּה** (p. 9, l. 27) = *moisture*, Arabic **بَلَل**, and is derived from **שָׂרָה**. But the editor in note 49 takes it to be a *coat of mail*, and tells us where it occurs in the Bible! How he could reconcile that with Arabic **بَلَل**, and how he could derive any sense passes one's comprehension. **תָּצַר** (p. 10, l. 21) is the imperf. indic. 3rd fem. first conjugation, and means *injure*. But in note 55 the editor tries to explain it as fifth conjugation with an active sense! **תִּפְרִי** (p. 13, l. 18; see note 70) is taken by the editor as the sixth conjugation, and he asserts that the lexica do not give that form. It is, however, nothing more than *tafirru*, being a *mater lectionis*. Considering the fact that *farra* means 'he fled', whereas we require a word meaning 'he flew', I should like to suggest the reading **תִּפְרִי**.

Die Petiḥōt der Pesiqṭā de Rab Kāhanā. Von Dr. DAVID KÜNSTLINGER. Krakau : Selbstverlag, 1912. pp. 79.

This book is a critical analysis of the opening addresses (Petiḥōt) that occur in *Pesiqṭā d' Rab Kāhanā*. By a plausible mode of procedure Dr. Künstlinger endeavours to establish which of the Petiḥōt are genuine and belong to the place where they are at present found and which crept in there by confusion. For it is well known that collectors and copyists sometimes grouped together various homilies from different books. Dr. Künstlinger skilfully dissects every *Pisḳā*, and by carefully examining the parallel passages he usually succeeds in assigning each homily to its right place. It is no doubt an important contribution to the study of Midrashic literature to which the author devoted another book entitled *Altjüdische Bibeldeutungen* which appeared in 1911.

Jahrbuch der Jüdisch-Literarischen Gesellschaft. (Sitz: Frankfurt a. M.), VIII (1910 = 5671). Frankfurt a. M.: J. KAUFFMANN, 1911. pp. 452 + 114.

Jahrbuch der Jüdisch-Literarischen Gesellschaft. (Sitz: Frankfurt a. M.), IX (1911 = 5672). Frankfurt a. M.: J. KAUFFMANN, 1912. pp. 505 + 88.

These two volumes of the *Jahrbuch* contain a number of very important essays on various subjects connected with Jewish literature. Dr. Ehrentreu's learned work entitled *Sprachliches und Sachliches aus dem Talmud*, which is continued in both volumes, is full of clever interpretations of talmudic passages. He is certainly right in assuming that the correct vocalization of רכוב *a rider* (Baba meši'a 8 b) is רִכְבּ (VIII, p. 3). Barth's view that such forms are *fa'ul* or *fā'ul* with an active signification (*Nominalbildung*, § 122 d) is not convincing, since we are dealing with a late period when the significations of the various forms were more or less fixed, and *fa'ul* became the ordinary passive participle. On the other hand, Dr. Ehrentreu is inaccurate in

considering it an Aramaic form which became hebraized in the Mishnah, as such forms occur in the Bible. Cp. *בְּחִן* *one who examines* (Jer. 6. 7) and *עֹשֶׂק* *an oppressor* (*ibid.* 22. 3). The most that can be said is that the frequency of the occurrence of this form in the Mishnah is due to Aramaic influence. Everybody is familiar with the epigram *אִיּוֹהוּ חָכֵם הָרוּאָה אֶת הַנּוֹלֵד* *He is wise who foresees what is to be* (Tamid 32 a). But it becomes infinitely wittier with Dr. Ehrentreu's explanation that there is here an intentional play on words, as *הַבְּמָה* sometimes means *a midwife*, and *נִילָד* denotes *a child* (VIII, p. 8). A plausible suggestion is to take *כִּסֵּא* (Shabbat 66 a) not as *a chair*, but as *a cripple who is moved about in a chair*. It is accordingly to be vocalized as *כִּפְסָא* like *רִכְבָּ* (IX, p. 25).—Dr. Breuer's *Die rechtsphilosophischen Grundlagen des jüdischen und des modernen Rechts* deals with the principles underlying certain laws.—Dr. B. Lewin is one of the best authorities on Sherira Gaon's famous Epistle. In his essay *Zur Charakteristik und Biographie des R. Sherira Gaon* (vol. VIII) he displays vast erudition and critical acumen. At the end he reviews A. Hyman's edition of that Epistle.—Dr. Bondi discusses at full length Werner Sombart's book *Die Juden und das Wirtschaftsleben* (*ibid.*). That book appeared in 1911, and created a sensation in all Jewish circles.—Dr. Salomon Stein gives a critical analysis of the book of Ecclesiastes (*ibid.*).—In his essay *Zur Methodologie der talmudischen Bibelexegese* Dr. Biberfeld attempts to describe the system which the Rabbis adopted in deriving decisions from biblical verses (*ibid.*).—Very valuable are the discussions of Dr. Grtinhut on the north-west boundaries of the Holy Land (*ibid.*), of Dr. Fischer on the Aramaic Jewish papyri (*ibid.*), and of I. N. Epstein on the book *בִּשְׂרָא עַל נְבִי נְהָלִים* (*ibid.*).—The merit of Dr. Fischer's treatise on *Die Urkunden im Talmud* has been appreciated in another place of this REVIEW.—Dr. S. Funk has some valuable suggestions in his article *Beiträge zur Geographie des Landes Babel*.—In his *Rechtsgutachten der Gconim* I. N. Epstein makes some clever corrections in Cassel's edition of that book (vol. IX). It is a thorough study, dealing exhaustively

with all minute points.—Most of us have been accustomed to speak of Jewish Hellenism; but Dr. Samuel Halevy questions the validity of this term. In his essay *Ist der Name 'Jüdischer Hellenismus' berechtigt?* (*ibid.*) he points out that the hellenistic movement only affected a comparatively small number of Jewish individuals, while the bulk of the nation opposed it very violently.—Those who are interested in the history of the Jews in Germany and Poland will find ample material in these two volumes. Dr. Löwenstein continues his essay *Zur Geschichte der Juden in Fürth* (vol. VIII). J. C. publishes *Aus dem ältesten Protokollbuch der Portugiesisch-jüdischen Gemeinde in Hamburg*, with translation and notes (vols. VIII and IX), and Dr. Stein reprints an important document which was issued by the Emperor Karl V on April 3, 1544, and ratified by the Emperor Ferdinand I on Jan. 19, 1562. This document purports to give certain privileges to Jews (vol. IX). Dr. Lewin gives an exhaustive account of Jewish physicians in Poland (*ibid.*).

The mediaeval Hebrew texts that are published in these two volumes are very important for specialists. Joseph Kara's commentary on the Second Book of Samuel, an anonymous commentary on Job (vol. VIII), the decisions of R. Isaac of Corbeil, and Joseph Nehemia's commentary on Jeremiah (vol. IX), are edited by Dr. S. Eppenstein, A. Sulzbach, J. Wellesz, and Bamberger, respectively. The memoirs of a Polish Jew (Moses Wasserzug) are edited by Dr. Heinrich Loewe (vol. VIII). They are full of quaint anecdotes and incidents, and one may glean from them many facts about the internal life of the Jews in Germany in the eighteenth and nineteenth centuries. The writer explains why he called himself Wasserzug. When a child he was nearly drowned, and was drawn out of the water in a miraculous way. Then the etymology of the Hebrew word מִשָּׁה is given in Exod. 2. 10 as being connected with the word מָשָׁה *he drew out*. Bearing these reasons in mind, this Moses had no hesitation in adopting the name of Wasserzug when asked by the Prussian government to get a surname.

Ahawath Zion we-Jeruscholaim. Varianten und Ergänzungen des Textes des Jerusalemischen Talmuds, nach alten Quellen und handschriftlichen Fragmenten ediert, mit kritischen Noten und Erläuterungen versehen. Von B. RATNER. *Tractate: Rosch-Haschana und Sukka.* Wilna: F. GARBER, 1911. pp. 148.

Ahawath Zion we-Jeruscholaim. Varianten und Ergänzungen des Textes des Jerusalemischen Talmuds nach alten Quellen und handschriftlichen Fragmenten ediert, mit kritischen Noten und Erläuterungen versehen. Von B. RATNER. *Tractat Megilla.* Wilna: F. GARBER, 1912. pp. 110.

Annotationes Criticae ad duos Talm. Bab. et Hierosolym. Tractatus Baba Kama et Baba Mezia. Textum constituit, res explicavit historicamque originem ex fontibus investigavit J. H. DÜNNER. Tomus sextus. Frankfurt a M.: SÄNGER UND FRIEDBERG, 1913. pp. 112 + 171.

Unlike the Talmud Babli, the Palestinian Talmud was for various reasons almost entirely neglected, and no commentaries on it have come down to us from the middle ages. The task of explaining it is, therefore, by no means an easy one, and the lack of early MSS. of the entire work enhances the difficulty. As the Yerushalmi was extensively quoted in the vast halakic literature, it has long ago been recognized that by comparing these quotations correct readings might be restored. It is this task that B. Ratner undertook to accomplish. With stupendous energy and great erudition he collected all the Yerushalmi quotations, and was thereby enabled to throw light on many obscure passages. The magnitude of Herr Ratner's work will be realized when we consider the fact that about 260 pages are devoted to three small tractates, although in these volumes he takes no account of passages occurring in Babli and Tosephta. For the tractate Rosh ha-Shanah he was also able to make use of the Yerushalmi fragments published by Prof. L. Ginzberg.

Some of the notes may at first sight appear too long, but, considering the vital importance of the subject, one would welcome an error in that direction. The only notes we could dispense with

are those that merely tell us that a word is vocalized in a certain MS. See, for instance, p. 26 on Rosh ha-Shanah. On the whole, this work will serve as an excellent basis for a critical edition of the Yerushalmi, should such a work ever be undertaken. One is glad to observe that the trustees of the Zunz-Stiftung have recognized the value of Ratner's contribution to Jewish learning, and are subsidizing this edition. It is to be hoped that further encouragement will enable the author to carry out his plan to his own satisfaction.

Among Jewish scholars who possess a thorough and comprehensive mastery of the talmudic literature together with a modern education the late Rabbi Dünner of Amsterdam was a notable figure. His Hebrew annotations to the Talmudim (Babli and Yerushalmi) are a pleasant combination of *pilpul* and sound scholarship. He discusses every passage carefully, and by comparing parallels in the various tractates he is able to correct errors that have crept into the text. It is true that he lacks the ingenuity of the veteran talmudic dialectician; but this very fact perhaps makes his researches more valuable.

The sixth volume covers the tractates Baba ḥamma and Baba meṣi'a of both Talmudim. The part dealing with the Yerushalmi in a measure supplements Ratner's work, for Rabbi Dünner makes a special point of comparing Yerushalmi passages that have parallels in Babli, Mekilta, and similar works. This volume was published by the sons of the author.

Hebräische Dichtungen. Von Dr. JOACHIM JACOB UNGER, Rabbiner der israelit. Kultusgemeinde zu Iglau. Jubel-Ausgabe. Veranstalet von dankbaren Schülern und Verehrern des Meisters aus Anlass der Vollendung seines 50. Amtsjahres auf dem Iglauer Posten. Mit einem Titelbilde. Wien: R. Löwit, 1911. pp. 153.

Modern Hebrew poetry has passed through many phases, some of which were of short duration. It is only about half

a century ago since any one who could write biblical Hebrew considered it his duty to compose poems in that tongue. The sacred festivals and biblical incidents as a rule furnished ample themes for those 'poets'. Now the times have changed, and at short intervals new lights arise. Even Bialik, whose poems are as yet universally worshipped, is in danger of being supplanted by Shneor, who is regarded by the young readers as the last word in poetry. The *Hebräische Dichtungen*, whose Hebrew title is *הגיון בכנור*, by Dr. Unger, belong to those good old times. One need not be a harsh critic to entertain sceptical views about the aesthetic value of these poems. Nevertheless they are a pleasant echo of those 'remote ages', when poetry and scholarship went hand in hand. Dr. Unger is a distinguished Jewish scholar who published some books on Hebrew philology. As was the fashion in his youthful days, he also sought the company of the muses. His poems cover a period of about sixty years, and may to some extent be regarded as historical documents, as they reflect the Jewish culture of the last century. They were scattered in various periodicals all of which are now defunct, and the admirers of Dr. Unger have done well in collecting them into one volume.

The most interesting part is that entitled *שירי ידידות* (*Poems of Friendship*). Most of them are poems addressed to leading scholars of the last century, such as Zunz, Zachariah Frankel, Mendel Stern, Letteris, Kaempf, Dukes, Reifmann, Lazarus, and Steinthal. There are also sonnets on the fiftieth anniversaries of the foundation of the Jewish community at Vienna and the Breslau Seminary. The part *זכרונות* has a poem in memory of S. D. Luzzatto.

Talmud-Legenden. Dem Talmud nacherzählt und eingeleitet von HANS LUDWIG HELD. München-Leipzig: HANS-SACHS-VERLAG (G. HAIST), 1912. pp. 88.

It is not the historical or philological side of talmudic legends, but their inherent poetry, that appealed to Herr H. L. Held. He

accordingly selected some fine legends from the Talmud and Midrash, and rendered them freely into German. Indeed, one can hardly call it a rendering, for it is only the central idea that the author tried to reproduce, but the mode of treatment and colouring are entirely his own. This little volume contains twelve legends, all of which are charmingly presented. The material easily lends itself to artistic treatment, and the author made excellent use of it.

It is difficult to see the reason why the author did not arrange the legends in a more logical order. The legends dealing with biblical heroes ought naturally to have preceded those about R. Akiba. And yet *Das Gespenst* (that beautiful story about R. Akiba and the ghost, occurring in Kallah R. II) is placed in front, and is followed by legends about Noah, Abraham, and Isaac.

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STUDIES ON JOSEPHUS

Die hebräischen Namen bei Josephus. Von D. A. SCHLATTER, Professor in Tübingen. (*Beiträge zur Förderung christlicher Theologie.* Herausgegeben von D. A. SCHLATTER und D. W. LÜTGERT. Siebzehnter Jahrgang, 1913. Drittes Heft.) Gütersloh: T. BERTELSMANN, 1913.

Despite the many-sided discussions and extensive investigations forming the great literature on Josephus there are still nooks and corners in the works of the great historian which bear the light of research and yield interesting data when carefully explored. This is proved by the present monograph on Hebrew proper names in Josephus in which Schlatter sets out to give in alphabetical order the Hebrew and Aramaic equivalents for the proper names occurring in Josephus's Greek writings. The basis of this work is Niese's critical edition of Josephus (Berlin, 1887-1894), the seventh and last volume of which contains a general and comprehensive index to all the books of the Jewish historian. But despite this significant help and the mechanical nature of the work of indexing, Schlatter has the merit of offering not mere equations, but also discussions of anomalous forms as well as geographical observations and identifications of some doubtful personalities and localities. Especially noteworthy is his attempt to reconstruct the original readings of Josephus by making them harmonize with the Masoretic text. This is done with a view to the historian's declaration in the preface to his *Antiquities*, that he proposed to give Jewish history from Jewish sources. But, as usual in such cases, Schlatter overdoes this process of emendation, harmonizing the names not only in consonants but also in vowels. Besides, Schlatter himself states (p. 7) the well-known fact that beginning with the period of Judges Josephus draws more and more on the Septuagint which, especially in proper names, does not conform to the Masoretic text.

The Hebrew-Greek index is followed by a small list of names for which the Hebrew or Aramaic equivalent has not been preserved. Then comes another list of purely Greek names, and finally a general Greek index in alphabetical order with references to the Hebrew-Greek index.

Schlatter's study serves to emphasize the fact that in his transliterations Josephus is akin to the later Greek versions of Aquila, Symmachus, and Theodotion; like these he adheres to the consonants of the Masoretic text, proving that the consonantal text of the Bible was already fixed in his days. The softening of the gutturals and loss of distinction among them is a further point of similarity. Only in the vocalization he still manifests considerable fluctuation, giving different values to the same vowel under the same condition. Noteworthy is the formation of segolate forms with pataḥ, as הֶבֶר ('Αβapos) for הֶבֶר, which we meet later in the so-called Babylonian system of punctuation. On the other hand, Josephus follows certain parts of the Septuagint in hellenizing Hebrew names by appending to them Greek case-endings and inflecting them like genuine Greek words. This is true of all his books except the *Bellum Iudaicum*.

Samaria und Peräa bei Flavius Josephus. Von LEO HAEFELI, Pfarrhelfer in Zurzach (Schweiz). (*Biblische Studien.* Herausgegeben von O. BARDENHEWER. XVIII. Band, 5. Heft.) Freiburg im Breisgau: HERDERSCHE VERLAGSHANDLUNG, 1913. pp. x + 120.

The works of Josephus, particularly his *Antiquities* and *Bellum Iudaicum*, being replete with geographical data and topographical material mostly based on personal knowledge, are very important for an understanding of Palestine in the most crucial point of her history. Hence it is that both geographers and travellers draw upon Josephus for the illumination of obscure localities and the identification of biblical as well as non-biblical places. To facilitate the use of Josephus along these lines, Gustav Boettger

has collected all the topographical-historical passages which are scattered in his books and grouped them alphabetically according to places (*Topographisch-Historisches Lexicon zu den Schriften des Flavius Josephus*, Leipzig, 1879). The reason for a new treatment of the subject is not indicated, but it may be surmised as an attempt to elucidate the geographical notes of Josephus in the light of modern research in the Holy Land.

Haefeli's work is a sequel to W. Öhler's 'Die Ortschaften und Grenzen Galiläas nach Josephus' (*ZDPV.*, XXVIII, 1 ff. and 49 ff.); E. Spiess's *Das Jerusalem des Josephus*, Berlin, 1881; and Erwin Nestle's 'Judäa nach Josephus' (*ZDPV.*, XXXIV, nos. 2 and 3). It is divided into two parts, the first dealing with Samaria, the second with Perea. In the case of each of these there is first, by way of introduction, a general description of the land, dealing among others with the population, boundaries, geology, and flora, then discussing places in detail. Unfortunately, we glean from Josephus less information about Samaria and Perea than about any other part of Palestine. Judea was the place of his birth, Galilee was the theatre of his campaigns, while Samaria was the enemy's country and of little interest to the man whose aim was to narrate minutely everything concerning the Jews and touch but slightly what lay beyond this sphere (comp. *Antiquities*, XX, 8. 3). As to Perea, though abounding in Jewish settlements, it was too far away from the scene of his activities and the sphere of his observation. No wonder then that, as Haefeli points out, Josephus is guilty of some misstatements with reference to Samaria, as e.g. when he maintains that Samaria is table-land like Judea, and that both possess the same water facilities.

The merit of Haefeli lies in the fact that he not only quotes Josephus, but also discusses the various theories, ancient and recent, in the identification of places. A considerable drawback is the lack of a Hebrew, Greek, and modern index.

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TO VOL. IV, P. 273.

WHILE appreciating the notice of my work on the 'Origin of the Third Personal Pronoun הוּא' which appeared in this REVIEW (vol. IV, p. 273), I may be permitted to point out, as the matter is of more than personal interest, that the reviewer has not observed that I adduce evidence that the root was הו not הוּא as he makes me say. That he does so is somewhat surprising, as the whole essay expressly connects the Semitic-Indo-European languages at the *biliteral* stage. This mistake would prevent those who are able and willing from following up my work.

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HINDU-ARABIC NUMERALS

The Hindu-Arabic Numerals. By DAVID EUGENE SMITH and LAUS CHARLES KARPINSKI. Boston and London: GINN & Co., 1911. pp. vi + 160.

Everybody knows, or should know, that our numerals, which we generally call 'Arabic figures', were called by the Arabs themselves 'Indian numbers'. The idea of representing the successive powers of ten by difference of position ought, one should have thought, have been suggested by the use of the Abacus, which actually makes use of this device; but, as a matter of fact, it was left to the Indians to conceive the idea of representing a missing place in the decimal scheme by a special symbol which we now call 'zero'; and Brockhaus has ingeniously observed that it very appropriately fell to the lot of the Hindu to invent a mathematical term for 'nothingness', corresponding to the 'nirvana' of the national creed.

Professor David E. Smith and Dr. L. C. Karpinski have written a little book on the Hindu-Arabic numerals, in which they have industriously brought together a great deal of information about the form of these numerals in Indian inscriptions and early manuscripts, distinguishing those which have a place value from those which have not. They give a separate chapter to the key symbol 'zero', which was originally a dot among the Hindus, as it still is among the Arabs. As is well known, our very expression 'to cipher' is from the same Arabic root as 'zero', which is called by the Hindus 'sunya', or 'void'. An elaborate chapter is given to what is known as the Boethius Question because, in some manuscripts of Boethius, a series of numerals from 1 to 9, said to correspond to the Arabic 'dust numerals', resemble very closely the Arabic and our own figures. If so, this would bring back the introduction of these figures into the sixth century at latest. The question is, however, merely

academic, since, without 'zero', the value of these 'dust numerals' would be zero.

The sixth chapter of our authors deals with the development of the numerals among the Arabs, and here comes in the special interest of the subject for the readers of the JEWISH QUARTERLY REVIEW. Our authors discuss the possibility of the numerals having come from India in two forms and through two routes, one through Kabul corresponding to the present Arabic numerals among the Arabs, and the other through Bagdad, the original of the European 'Arabic figures'. Now at Bagdad, in the reign of Mamun, two treatises were composed on the Indian arithmetic with the new 'zero' symbol, one by Mohammed ibn Musa al-Khowarazmi, from one of whose treatises we get the title of algebra, and from whose name we get the obsolete name of Indian arithmetic 'Algorism'. The other treatise was written by Sened ibn Ali, a renegade Jewish astronomer. In the treatise on Education by Samuel ibn Abbas, given by Guedemann at the end of his *Unterrichtswesen*, it is stated that after the boy became *Barmizwah* he studied Indian arithmetic and astronomy in his fourteenth year.

But there is possibly an even earlier and more important connexion of the Jews with the introduction of Indian numerals west of the Indus which our authors have not considered. In Steinschneider's essay on the History of Translations from Indian into Arabic, in the twenty-fourth volume of *ZDMG.*, pp. 353-4, he translates a passage from Abraham ibn Ezra in which that writer declares that it was a Jew who translated Kalila wa-Dimna in the reign of Es-Saffa'h, *c.* A. D. 750, and brought back an Indian scholar who taught the Arabs the Indian numerals from Arin or India.¹ Now our authors state that the first definite trace that we have of the introduction of the Hindu system into Arabia dates from A. D. 773 (page 92); and this chimes in, as regards time, with the tradition reported by Abraham ibn Ezra.

¹ I observe in Mr. Murray's recently-issued *History of Chess*, p. 154, that chess was also introduced at the same time as Kalila wa-Dimna, according to Masudi.

It is thus possible, though the matter requires more thorough investigation, that the colporteur of our present Arabic figures, from India to Persia, was a Jew.

As regards the definite introduction of the numerals into Europe, here again our authors introduce a certain amount of Jewish interest by quoting the well-known account of the travels of Jewish merchants, given by Ibn Khordadbeh. As they remark (p. 101), 'such travellers, about A. D. 900, must necessarily have spread abroad a knowledge of all number systems used in recording prices or in the computations of the market'. Pope Sylvester brought back from Spain a new kind of numerals with Apices at the top which have Arabic names derived from Morocco; but these seem to correspond more to the Gobar or 'dust numerals'. The Spanish Jew, John of Seville, adapted Al-Khowarazmi's work about A. D. 1140, and this was one of the earliest treatises on Algorism or practical Indian arithmetic as opposed to the use of the Abacus about the same time. Abraham ibn Ezra knew the Indian arithmetic which he refers to in his Book of Numbers in which he uses the first nine letters of the Hebrew alphabet, with the nine figures and a circle for zero. The final chapter of our authors deals with the spread of the numerals in Europe chiefly through Leonardo of Pisa, after whose time the use of these figures becomes more and more frequent, and the investigation fades into the light of common day.

Sufficient has been said to indicate the interest and value of this little book, which has evidently involved a large amount of research on the part of the authors. They have scarcely presented the results of their work in very readable or accessible form, but the materials are there with all requisite references. If I have ventured to indicate one or two lacunae in their investigations, which have particular bearing upon the part taken by Jews in this important movement, I am only enabled to do so by the fortunate chance that I have made special study of the Bidpai literature.

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New York.

THE ANCIENT HEBREW LAW OF HOMICIDE*

BY MAYER SULZBERGER, Philadelphia.

I

THE law of homicide is an index to certain sides of national character. Where there is a small, powerful class able to monopolize rule and government, the rights of the great mass of common people are weak and ill-assured. In such a society there is much violence. Arrogant and turbulent spirits are in perpetual rivalry, and compete for mastery. The stronger steadily eliminate the weaker. Life is held cheap. The chiefs, who are always risking their own lives, compel their underlings, who have no great stake in the contest, to risk theirs. It is a kind of feudal system, in which each chief is the head of a clan or other organization with whose aid he hopes to retain or to achieve pre-eminence.

Out of such a condition the early laws of homicide arise.

Clans in juxtaposition are never quite at peace with each other. There may be a kind of truce, but this is liable to be broken at any moment. The murder of a clansman by a member of another clan is *casus belli*, for the sufficient reason that it weakens the assailed clan. If unpunished, the act tends to be repeated, and this process would, in a relatively short time, bring the weakened clan under subjection to the aggressor clan.

* A course of five lectures delivered before the DROPSIE COLLEGE FOR HEBREW AND COGNATE LEARNING, March 31, April 3, 7, 10, and 14, 1913.

In such a state of society the law of retaliation (the *lex talionis*) becomes inevitable. The assailing clan must be weakened as much as the assailed, if the latter is to retain its relative strength and position. What we call *lex talionis* is therefore, primarily, a means for the defence of the clan, an inter-clan rule. It is one of the early stages of what we now call international law, which even yet knows no final arbitrament but the sword.

The period when this rule began to be applied antedates even primitive history. We know of no stage in which men did not form a kind of society, however small or rude it may have been. And so soon as this point has been reached, individual action ceases to be unrestrained, and must accept limitations useful for society. A member of the blood-covenant may no longer slay his fellow-member. However determined his purpose, the *hatan damim* (member of the blood-covenant guild) must forgo it when he learns that the intended victim is also a member (Exod. 4. 24-6).¹

¹ The text, Exod. 4. 23-6, is of great antiquity. It refers to an early state of the law in which for certain offences the penalty of death is imposed on the eldest son of the criminal. If Pharaoh will not let the people go, if he will enslave JHVH's first-born (*bekor*), then JHVH will slay his first-born (*bekor*). This is the primitive *lex talionis*, traces of which are clear in the Hammurabi Code, §§ 116, 210, and 230.

This denunciation of punishment against Pharaoh by killing his first-born son brings to the writer's mind an incident in the life of Moses which he then proceeds to relate. Moses has been guilty of some delinquency which was doubtless plainly told in the old narrative but is here omitted. The Rabbis inferred that when Moses married the daughter of Jethro, the latter as a condition of his assent stipulated that the first-born son of the union should be brought up as a Gentile. Hence the boy Gershom was not circumcised (Ginzberg, *Legends of the Jews*, vol. II, p. 328). As JHVH claimed the first-born of all Israel as his, the failure of Moses to circumcise Gershom was to be punished by the death of the latter. The quick mother-wit of Zipporah saved the situation. She circumcised the boy, cast the foreskin at JHVH's feet uttering (for the boy) the proper formula: 'Now

From the very beginning of organized society, there must have developed two sets of laws, one for those within and the other for those without the clan. The latter is simple and short. A member of clan A has weakened clan B by killing one of its members. Clan B must retaliate by weakening the aggressor clan at least as much.

This policy, however wise as against another clan, would be ruinous if applied within the clan. One member has killed another, and has thereby reduced the strength of the clan. If the aggressor be killed, its strength is further reduced. The direct clan-interest is that the aggressor be kept alive, unless he is likely to further imperil the community. It is this contingency which creates a necessity for devising a lesser punishment than death for homicide within the clan, and hence is evolved the system of imposing a money penalty on the homicide—*werigild*. It is this contingency, too, which creates a necessity for ascertaining the circumstances of the tragedy and its underlying motive. Hence follows a subdivision of homicide into murder, which even within the clan may continue to be a capital offence, and manslaughter, which may readily be compounded for.

Two systems of homicide law are thus made more or less co-existent: an external homicide law, which is the *lex talionis*, a kind of war, and an internal homicide law, which seeks to ascertain the very right of each case—what we would call justice.

This co-existence of two discordant systems of law in each of the many clans composing a state or kingdom, tends

art thou of blood-covenant (*hatan damim*) with me!' JHVH forbore his purpose. And then follows the explanation that circumcision constitutes blood-covenant, with the necessary implication that blood-covenantees may not for any cause kill each other.

steadily to undermine the *lex talionis*. With the progress of the state, the relations of its several parts become closer and closer, and the comity between them increases. The justice of the internal law becomes more and more apparent, and with the growth of peaceful relations between the several clans, the idea of the unity of the state is strengthened. The feeling which individuals had for their clan is gradually transferred to the state or kingdom, and it is seen that all the clans together constitute one great clan, which is called the state. When this point is reached the *lex talionis* dies a natural death.

This progress, though curtly described, is very slow, and is reached, not by a leap, but by slow stages. For long ages the *lex talionis* continues to be recited as regulating the relations of men within the clan, and yet it is all the while undergoing decomposition. The Code of Hammurabi, if taken literally, would present a shuddering spectacle. Its notions of retaliation betoken fierce barbarism. It is reasonably certain, however, that in very early times its crude literalness was modified, and that the law as administered in later ages was far different from the bald meaning of its words. The marked intermediate stage, which is most important in the consideration of our subject, may be called the *wergild* stage, or, to use the Hebrew term, the *kofer* stage.

When a kingdom has travelled a certain distance on the road to unity, it perceives that a state of war between its parts, however mild or modified, is injurious to its progress. The same necessity which compelled the clan to work out an internal homicide law milder than the external homicide law, presses upon the state. For its purposes the several clans cannot be hostile to each other,

but must constitute one great national family. The distinction between external homicide law and internal homicide law cannot exist for it. Human nature, however, is more powerful than governmental logic; ancient notions and customs are not to be done away with in a day, nor can hereditary feuds be converted into brotherly feeling by mere fiat. Force is necessary, and the growing state exerts it to prevent bloody inter-clan feuds. The first mode of prevention is always the insistence on *wergild* between the two clans, that is, the injured clan, instead of going to war, must accept a money composition for the loss of its member. The central state must, however, have acquired great stability and power before it can effect this end.

When this stage is reached, the kingdom has surmounted a danger leading to disintegration. By way of compensation, perhaps, this improvement leads to another danger. Wealth has acquired a new force. It now enables its owner to kill the member of another clan with much less danger to his own life than before. With the growth of a state's wealth this peril grows more and more formidable. Hired assassins will form a class, and individual safety will be greatly impaired. The weakness of the *kofer* system will become more and more apparent, and the moral power of the internal homicide law will make its way.

When the proper point is reached, the state overthrows the *kofer* law and substitutes for it the inquiry into the circumstances and motive of every homicide, which results in the doctrine that homicide is so great an offence against the state that the private wrong is submerged, and that it is incapable of private composition, no matter what the reparation offered. Then only is the state fully organized to carry on a civil government.

We have no adequate means to ascertain when the pre-Hebraic inhabitants of Palestine passed through these stages. The probability is that long before they were conquered by the Hebrews they had reached the *wergild* stage.

The Code of Hammurabi of Babylonia (*circa* 2250 B. C.) has as yet no general state-law punishing homicide. This crime must therefore have been under the jurisdiction of recognized constituent elements of the state, such as clans or the like, which severally protected their clansmen's lives against assault from without and within. There are indications that the *kofer* stage had been reached.

The Hebrew tradition is that the state was formed at the crossing of the Jordan; and by the formation of the state we mean that every male Israelite became a member of a great national blood-covenant which, theoretically at least, overrode all ties of family, clan, or tribe. At Gilgal, before the campaign for the conquest of Canaan began, this great covenant between all Israel and JHVH was entered into (Josh. 5. 2-9). Pesah was celebrated (5. 10-12), and JHVH, by special messenger (*sar-seba-JHVH*), ratified the covenant, and in symbolical language welcomed the new-comers to the land of JHVH, which had become holy in fact by the entrance of the covenant people.

In the course of lectures delivered before this College last year, my endeavour was to show that the pre-Hebraic inhabitants of Palestine were politically organized into small city-kingdoms; that the Hebrews, when they conquered the land, accepted the system, but did away with the kings, converting the petty kingdoms into cantons or districts, which continued to be called cities (*'arim*), and that these became the constituent elements of the Hebrew

state, abolishing, in theory at least, the former dividing lines of family, clan, and tribe.

The process of forming this new Hebrew state lasted for more than two centuries. The settlers advanced further and further, coming into closer and closer contact with the natives. Ancient Canaanite modes of thought impregnated the settlers' minds, and both in religion and in law Canaanite views struggled with Hebraic principles. How bitter the contest was the whole Hebrew literature shows. Though in the view of practical statesmen Hebraism in the end triumphed, both in church and state, yet the idealists were so dissatisfied with the Canaanitic alloy, which always more or less manifested itself, that a reader of the prophetic discourses might almost be misled into believing that Baal had borne off the victory from JHVH, and that the ancient codes had crowded out the *Torah*.

Our present task is to show the contest between the Hebrew law on the one side, and the Canaanite practice on the other; to point out that the *šikne ha-'ir*, infected as they were with the old Canaanite notions and practices, had to be restrained and corrected, at first by federal delegates, and when this measure proved inadequate, had to be deprived of large and important items of legal jurisdiction, which were transferred to federal courts, and then to make clear that for the unity of the state it finally became necessary to deprive the *šikne ha-'ir* of all important judicial functions, and to establish a complete system of federal courts, sitting in every 'ir, and thus bringing the Hebrew law home to every corner of the kingdom.

In the investigation of this movement we have chosen to begin with the law of homicide, not only because of its fundamental importance, but also because the *Torah* gives

fuller and more detailed information on this branch of jurisprudence than on any other subject of the criminal law. This valuable feature of the *Torah* must not, however, blind us to the fact that its statement of the law on any subject is not exhaustive. The Hebrews had for ages lived a settled pastoral life in a portion of the Egyptian kingdom expressly assigned to them. While subject to the laws of the Empire, they had a numerous community of their own, among whom grew customs and observances which were, in effect, a kind of internal law. The tradition was that they were governed by elders. At the very beginning of the public career of Moses and Aaron, they submitted their plans to this body (Exod. 4. 29-30; 12. 21; 17. 6; 19. 7).

The oral or customary law which thus naturally grew among the Hebrews in Egypt is nowhere recorded. It was a *Torah she-be'al peh*, which, with them, as with all other nations, preceded any written code. Nor did the written code, *Torah she-bi-ktav*, when it came, stop the further development alongside of it, of the old *Torah she-be'al peh*. New and unforeseen circumstances would arise which had to be met by the tribunals, and their decisions, from the time when the Oracle took jurisdiction of certain cases down to the latest period when judges of ordinary law-courts presided, constituted an ancillary body of oral or common law.

We are not without specific evidence on this subject. An examination of the texts of the Pentateuch relating to homicide discloses the fact that their contents are of two diverse kinds, one of them being in the dogmatic form of *mishpatim* (statutes), and the other of them *torot*, or summaries of the facts and the law of cases, in the manner of the syllabi of our law reports.

Nor is this a peculiarity of the law of homicide. There are in the *Torah* at least four other instances of reported cases: the case of the blasphemer of the *Shem* (Lev. 24. 10-16), that of the Sabbath-breaker (Num. 15. 32-6), that of Zelophehad's daughters (Num. 27. 1-11), and the second case of Zelophehad's daughters (Num. 36. 1-10). In each of these the facts are narrated and the principle of the decision announced for guidance in the future. They constitute what we call case-law, as distinguished from statute law, and what the Hebrews call *Talmud*, in contradistinction to *mishpatim* or *Torah*. The memory and results of this steady accumulation of case-law during a period of perhaps fifteen hundred years are preserved to a small degree in the Bible, and to a much greater degree in the *Talmud*. It is to be hoped that studies in the vast field of Talmudic literature may give us light on many subjects of which we are, at present, woefully ignorant. We are not able to show the contents of the ancient pre-Mosaic oral law, and cannot therefore pretend to give its provisions in relation to homicide. It is, however, fair to assume that the written law was, in the main, declaratory of the oral law that immediately preceded it. Such, indeed, is the history of law in all ages and among all peoples. The human nature of great masses of people prevents the sudden overturning of a body of ancient habits by mere fiat, and the substitution for them of strange customs contrary to inherited notions.

It is from the written law—from the *Torah*—that we must learn the law of homicide: what constitutes the offence, how the perpetrator is to be ascertained, and when ascertained, how he is to be punished.

Each of the five books of the *Torah*, from Genesis to

Deuteronomy, contains passages bearing on these interesting questions. The references in Genesis are most widely known and quoted, not because they are parts of any legal code, properly so called, but because they announce broad, general principles, the result of philosophical reflection, and therefore appeal to a large circle who would be repelled by a statement of practical law. From their nature they are fitter for consideration, after we shall have made a study of the book, than as an aid in the preliminary work.

It is from an examination of all this material that we are to learn the Hebrew law of Homicide. This study would, however, be but partial and imperfect unless we shall at the same time endeavour to ascertain the state of the law upon that subject among the people whom the Hebrews conquered. For this there are but two sources: one the Hebrew law itself, in so far as it discloses the nature of the native law which it was combating, and the other the code of Babylonian law, known as the *Ḥammurabi* Code, said to have been promulgated by Ḥammurabi, King of Babylon, about 2250 B.C. It was in the year 1902 that M. de Morgan, while excavating the acropolis of Susa, found three large fragments of a block of black diorite. When joined, they formed a pillar about seven feet high, and tapering from seventy-one inches to sixty-two inches. At the upper end of the front side was a bas-relief representing the seated sun-god Shamash, presenting the code of laws to Ḥammurabi. Then follow on the same side sixteen columns of writing, and on the reverse side twenty-eight columns. On the front side five columns of writing have been erased. When complete the inscription probably contained forty-nine columns, four thousand lines, and about eight thousand words. It is from this inscription

in the Babylonian language that the Code has been carefully studied by experts, many of whom believe that it exerted a powerful influence in shaping legal doctrines and customs in all Western Asia, as far as the Mediterranean Sea. If this view be correct, the Code would be some index at least of the character of the law which the Hebrews encountered and finally overcame.

Before entering on the subject, it may be well to reflect that in the natural course of events, the law of Hammurabi must have undergone changes both in Babylonia and in Assyria. All communities must, in a considerable degree, make their laws conform to the necessities of national life, and there is no ground for believing that these great states were, in this respect, exceptional. The fact that the old code was for two thousand years treated with religious reverence is entirely consistent with the obsolescence of some of its provisions.

In discussing this ancient code, I make use of the excellent work of Professor Rogers, *Cuneiform Parallels to the Old Testament* (New York, 1912). The Code of Hammurabi is there estimated to have contained two hundred and fifty-two sections, of which thirty-five (those between Secs. 65 and 100) have been erased.

We find but eleven sections in anywise bearing on homicide. They are the following:

Section 153. If a man's wife cause her husband to be killed for the sake of another man, they shall impale that woman.

Sec. 207. (The subject of this section is introduced by the preceding section, which is given here for the better understanding of the matter: *Sec. 206.* If a man have struck a man in a quarrel, and have

wounded him, he shall swear, 'I did not strike him intentionally', and he shall be responsible for the doctor.)

If he die of the blows, he shall swear, and if he be of gentle birth he shall pay one-half of a mina of silver.

Sec. 208. If he be the son of a freedman, he shall pay one-third of a mina of silver.

Sec. 210. (The subject of this section is introduced by the preceding section, 209, which is as follows:

Sec. 209. If a man have struck a gentleman's daughter and have caused her to drop what was in her womb, he shall pay ten shekels of silver for what was in her womb.)

If that woman have died, they shall put his daughter to death.

Sec. 212. (*Sec. 211.* If through blows he have caused the daughter of a freedman to drop what was in her womb, he shall pay five shekels of silver.)

If that woman have died, he shall pay one-half a mina of silver.

Sec. 214. (*Sec. 213.* If he have struck a gentleman's maid-servant, and have caused her to drop that which was in her womb, he shall pay two shekels of silver.)

If that maid-servant have died, he shall pay one-third of a mina of silver.

Sec. 229. If a builder have built a house for a man, and have not made it strong, and the house built have fallen and have caused the death of the owner of that house, that builder shall be put to death.

Sec. 230. If he have caused the death of a son of the owner of the house, they shall put to death a son of that builder.

Sec. 231. If he have caused the death of a slave of the owner of the house, he shall give to the owner of the house slave for slave.

Sec. 251. If an ox given to goring belong to a man, and have shown to him this vice that he is given to goring, but he have not bound up his horns, and have not shut up his ox, and that ox have gored a man of gentle birth and have killed him, he shall pay one-half of a mina of silver.

Sec. 252. If he be a gentleman's slave he shall pay one-third of a mina of silver.

There is here no hint of a general law of homicide. If a man, having a grudge against another, would hide himself and lie in wait for his coming, and then would fatally stab him in the back, there is nothing in the Hammurabi code entailing any punishment for the act.

This means not that such atrocious deeds were approved or condoned, but that the state had not yet accepted as part of its function the protection of the lives of its citizens in general. Nor does it mean that every individual man was left to look out for himself, without help from anybody. No great state could live in such rank disorder. The reasonable inference is that minor corporations, such as families, guilds, or clans, had jurisdiction over homicide. Strangely enough, the Code itself gives no information, direct or indirect, upon the subject. The eleven provisions cited throw no light upon it.

Section 153, punishing by impalement a wife who causes her husband to be killed for the sake of another man, is not a homicide statute in the proper sense of the word. The wife who is to be so horribly punished has not herself committed the murder. She has procured another to do

the deed. There is no provision in the Code for punishing the actual murderer. It is thus seen that the crime of the wife is her treason, her breach of marital fidelity. Indeed, it would seem that if she procured the death of her husband for any cause other than her preference for another man, the statute would not apply.

Sections 207 and 208 refer to quarrels. The law on this subject is, generally, that if a man is wounded in a quarrel, and the party wounding him swears that he did not intend to inflict a wound, he suffers no other penalty than the payment of the doctor's fees. If, however, death ensues, the penalty is adjusted according to the social status of the victim. If he be of gentle birth, the penalty is a half silver mina; if a freedman's son, a third of a silver mina.

In this case the homicide is viewed as accidental. It is not looked on as a crime, but merely as a trespass for which damages must be paid to the representatives of the deceased. As to the amount thus paid, we learn from Section 252 that the conventional value of a slave was one-third of a silver mina. The penalties imposed for accidental homicide were looked upon as mere compensation for loss sustained, and included no punitive element whatever.

Sections 210, 212, and 214 refer to blows inflicted on a gravid woman. The sections are obscure, and no light is thrown upon the peculiarity of a man's striking a woman in that condition. If we fully understood the technical terms of the Code, we would probably conclude that the cases do not refer to a quarrel between the man and woman, but to an accidental blow received by the woman while the men were quarrelling with each other. Be that as it may, if the consequence of the blow be a miscarriage whereby the child is lost, the amount to be paid is, in the case of a gentle-

man's daughter, ten shekels of silver, and in the case of a female slave, two shekels of silver.

If, however, the death of the woman ensues, the punishment is adjusted according to the social status of the victim. If she be a gentleman's daughter, the daughter of the assailant is to be put to death; if she be a freedman's daughter, the assailant pays as compensation one-half silver mina; if a slave, one-third silver mina.

The death penalty thus imposed in one case, not on the perpetrator, but on his daughter, indicates that there is involved no notion of a crime against the state. All the other penalties are paid as compensation to the survivors of the deceased. One may fairly suppose that by this ancient law the father of the deceased woman was entitled to kill the daughter of the assailant, and that this was supposed to be exact compensation. As you have killed my daughter, we will, if I kill your daughter, be even.

It is not the state which inflicts the death-penalty on the innocent daughter, whose father, even, has not committed a crime. If he had struck a man with the same result, he would merely have paid the conventional value of the deceased. The inference is easy that the dead woman's father could barter his right to kill the assailant's daughter for a reasonable *kofer*, to be agreed upon between the parties, or perhaps to be adjusted by a tribunal. The effect of this apparently dreadful law would then be that the assailant could not be discharged by the payment of the conventional half silver mina, but would have to pay punitive damages in addition thereto. The pervasiveness of money damages in the Code would seem to warrant the conclusion that in the course of time the literal meaning of the Code would be modified in this direction.

Sections 229, 230, and 231 refer merely to one class of persons,—builders whose structures fall down and hurt somebody. If the owner is killed, the builder is put to death; if the owner's son is killed, the builder's son is put to death; if the owner's slave is killed, he shall furnish another slave in his stead. There is here no pretence of a crime. The builder has been guilty of an error of judgment, or, at worst, of some degree of negligence. He certainly never intended to kill any one.

The penalties show that the law does not treat the builder as a criminal. Otherwise his son would not, in a certain eventuality, be put to death, while he is allowed to go unpunished.

From the fact that builders are the only class selected for this sort of legislation, there must have been some peculiar reason which is not at present ascertainable.

For the rest, we may be reasonably certain that in course of time the practice of *kofer* also prevailed in this class of cases.

Sections 251 and 252 cover the case of a known goring ox allowed by his master to roam at large without his horns bound. There the owner, by reason of his negligence, must pay to the family the conventional value of a member thereof who has been killed by the ox,—a half-mina of silver for a gentleman, a third for a slave. Punitive damages there are none.

In none of these cases (except perhaps that of the faithless wife) is there any evidence that the state looked upon the acts punishable by death as crimes against the state, or indeed as anything but private trespasses against individuals. Nowhere is there any consciousness that the intent to kill is a proper subject of inquiry, or that the

presence or absence of such intent is of any moment. Nowhere is there a hint of any public duty or any public officer to enforce the death penalty.

The reasonable conclusion is that all of the acts above enumerated, punishable by death (except perhaps that of the faithless wife), were looked upon as mere civil trespasses; many of them, by the very terms of the Code, adjustable by money settlements, and the rest, in the course of time, falling under the same rule.

In their origin these laws were doubtless parts of a comprehensive system of retaliatory jurisprudence. In order to realize this fully, it will be useful to give certain additional sections of that Code, closely related in spirit to those already cited.

Section 116. If the one seized die in the house of him who seized him, of blows or of want, the owner of the one seized shall call the merchant to account, and if it be the son of a freedman that died, they shall put his son to death . . .

Sec. 192. If the son of a chamberlain or the son of a vowed woman have said to the father who reared him or to the mother who reared him, 'Thou art not my father', 'Thou art not my mother', they shall cut out his tongue.

Sec. 193. If the son of a chamberlain or the son of a vowed woman have known his father's house, and have hated the father that reared him and the mother that reared him, and have gone back to his father's house, they shall pluck out his eye.

Sec. 194. If a man have given his son to a wet-nurse, and that son have died in the hands of the wet-nurse, and the wet-nurse, without consent of the father and mother,

have substituted another child, they shall call her to account ; and because, without the consent of the father and mother, she has substituted another child, they shall cut off her breasts.

Sec. 195. If a man have struck his father, they shall cut off his hands.

Sec. 196. If a man have destroyed the eye of a gentleman, they shall destroy his eye.

Sec. 197. If he have broken a gentleman's bone, they shall break his bone.

Sec. 200. If a man have knocked out the tooth of a man of his own rank, they shall knock out his tooth.

Sec. 202. If a man have struck the person of a man who is his superior, he shall receive sixty strokes with an oxtail whip in public.

Sec. 205. If a gentleman's slave have struck the cheek of a freedman, they shall cut off his ear.

Sec. 218. If a doctor have operated with a bronze lancet on a gentleman for a severe wound, and have caused the gentleman's death, or have removed a cataract with a bronze lancet, and have destroyed the gentleman's eye, they shall cut off his hand.

Sec. 226. If a brander, without the consent of the owner of a slave, have made a slave's mark unrecognizable, they shall cut off the hands of that brander.

Sec. 253. If a man have hired a man to oversee his field, and have furnished him with seed-grain, have entrusted him with oxen, and have contracted with him to cultivate that field, and that man have stolen the seed or the provender and it be found in his hands, they shall cut off his hands.

Sec. 282. If a slave have said to his master, 'Thou art not my master', they shall call him to account as his slave, and his master shall cut off his ear.

The perusal of these provisions arouses a feeling of repulsion. We are apt to forget the slow steps by which mankind has been educated. It need not be doubted that when primitive man, before organized society, suffered injury at the hand of another, he sought revenge by inflicting on his enemy all the harm he could. The idea of limiting the punishment to the exact measure of the offence betokens the birth of moderation and of justice. The crude notion that human law can make good human wrong is pathetically ineradicable. The *lex talionis* which shocks us is built on this insecure foundation. The experience of mankind shows that in measuring punishments the feelings or desires of the injured party must be brushed aside as irrelevant, and that nothing can be considered but the interests of society as a whole. The realization of this truth has always destroyed the *lex talionis*, that is, has substituted for specific retaliation, in which there is present a spice of personal malice, general retaliation, which punishes the culprit, but only so much and in such manner as comports with the welfare of society.

When we reflect on these things, we shall be the more ready to do justice to the men of the remote past, who were more like us than we are always ready to admit.

The retaliation statutes of Hammurabi, which we have quoted, were doubtless produced by the conditions of the time.

The readiness to mutilate men evinced in this series of laws, indicates a callousness that may give a clue to their origin. In the military camp, where power dwells in a single person, and instant obedience is indispensable, the spirit of such laws is generated. It is difficult to believe that they were not, as time went on, modified to suit

a more peaceful environment. Whether this was or was not the case, the fact stands out clear as respects homicide, that under the Hammurabi Code the state had not yet conceived it as a crime cognizable by it alone, in which no private right can be recognized, and in which every private wrong has been merged.

There is one other feature of the Hammurabi Code which is to be noted, namely, the distinction between a superior class of 'gentleman' and the rest of the people. The distinction is preserved all through the law of homicide and the *lex talionis*. That the Palestinian farmers in the twelfth or thirteenth century B. C. had this sharp distinction of classes is very doubtful. The great probability is that the gentleman's law did not seriously affect them, and that we must look to the common people's law if we would get an idea of the Hammurabi influence in Palestine.

From this it appears that though the loss of a gentleman's eye was punished by the loss of the aggressor's eye, and the shattering of a gentleman's limb was punished by the shattering of the aggressor's limb, yet if these trespasses were committed against a poor man, the aggressor paid him one mina of silver (Sec. 198), and if they were committed against a slave the penalty was half the price of the slave, to be paid, of course, to the master (Sec. 199).

The deprivation of a tooth in an equal involved the loss of the aggressor's tooth, but a poor man's tooth was atoned for by one-third of a mina of silver (Sec. 201). The death by blows of a gentleman's gravid daughter entailed the death of the assailant's daughter, but if it was a poor man's daughter who died, half a mina of silver paid for her (Sec. 212), and if she was a slave, one-third of a mina of silver was enough (Sec. 214).

Even the doctor who lost his hand when his gentleman patient lost his eye, paid only half the price of the slave if the latter had suffered the same misfortune, the payment, of course, being made not to the victim, but to his master (Sec. 220).

The inference seems reasonable that, if the Hammurabi law exerted considerable influence in Palestine, its probable effect was to establish a general custom of money settlements for all kinds of trespasses, from a blow to wilful murder.

As regards the Hebrew law of homicide, you are all familiar with that one of the Ten Commandments which in two words forbids murder, *lo tiršah* (Exod. 20. 13; Deut. 5. 17). While it, like the other commandments, is a pregnant memorandum of human duty, it can scarcely be called a law, in the ordinary sense, since it denounces no punishment for infraction. In all human societies it has been found that merely telling men what they should do, or what they should refrain from doing, is inadequate to guard society against the hostile acts of individuals dominated by anger, greed, lust and other violent passions. However insistent certain theorists are on trusting to the spiritual strength of every individual to assure his right conduct, practical statesmen and legists have always deemed it necessary to make the element called 'sanction' a necessary feature of law. 'Sanction' means that part of the law which fixes a punishment for its infraction.

It is with the Pentateuchal laws of homicide, which include this indispensable element, that we deal.

The first group of them is found in Exodus, chapters 21 and 22; the second group in Leviticus, chapter 24; the third group in Numbers, chapter 35; the fourth in Deuteronomy,

chapters 4, 19, and 27, and then there is a supplemental group in the Book of Joshua, chapter 20.

We shall now give these texts in full, in the following order: first, the Exodus texts; second, the Deuteronomy texts; third, the Numbers texts; fourth, the Joshua texts; and fifth, the Leviticus texts. In choosing this order of presentation, it is necessary to remark that our purpose is not to ascertain the dates of texts, but the probable course of development of institutions. It may be that there are elements of various ages in the same text, so that one treated lower down may contain material as old or older than one earlier considered. The vast work done by experts in the literary field will enable any one who is interested in that phase of the subject to find ample guidance and instruction.

THE EXODUS TEXTS

Exod. 21. 12-14. He that smiteth a man (*makkeh-ish*) so that he die, shall be put to death. But if a man lie not in wait (*lo şadakh*), but God deliver him into his hand (*ha-Elohim innah le-yado*), then I will appoint thee a *maḳom* whither he shall flee. If, however, a man come presumptuously (*yazid*) upon his neighbour to slay him with guile (*be-'ormah*), thou shalt take him from mine altar for death.

21. 20. If a man smite his male or female slave (*'abdo o amato*) with a rod (*shebet*) that he die under his hand, *naḳom yinnuḳem* (he must be punished).

21. 21. But if he continue a day or two, *lo yuḳḳam* (he need not be); it is his money (*keseḳ*).

21. 22. If men strive and hurt a woman with child so that her fruit depart, but no *ason* follow, *'anosh ye-*

'*ancsh* (he shall pay a fine) according to the claim of the woman's husband so far as it may be approved by the judges (*we-natan bi-filim*).

21. 23. But if *ason* follow, then thou shalt give *nefesh tahat nefesh* (life for life).

21. 24. Eye for eye, tooth for tooth, hand for hand, foot for foot,

21. 25. Burning for burning, wound for wound, stripe for stripe.

21. 28. If an ox gore a man or a woman that they die . . .

21. 29. And the ox were wont to push with his horn in time past, and the owner was told of it and has not kept him in, then if he has killed a man or a woman, the ox shall be stoned and his owner also shall be put to death (*yumat*).

21. 30. If, however, a *kofer* be acceptable (to the injured family), he may pay it and save his life.

21. 31. In the case of a son or daughter so killed, the law (*mishpat*) is the same.

21. 32. In the case of a male or female slave so killed, he shall pay the master thirty shekels of silver and the ox shall be stoned.

22. 1 (2). If a thief be found breaking in and be smitten so that he die, for him there is no *damim* (blood-guilt).

22. 2 (3). Unless the sun have risen, in which case there is *damim* (blood-guilt) for him.

THE DEUTERONOMY TEXTS

The Deuteronomy texts are as follows :

Deut. 4. 41. Then Moses set apart three cities east of Jordan.

4. 42. That the *roʿseal* might flee thither who should kill his neighbour *bi-bli-da'at* (unwittingly), not hating

him (*lo sone-lo*) before, and fleeing to one of these cities may live.

4. 43. Bezer (in the wilderness) in the plain country of the Reubenites ;

Ramoth (in Gilead) of the Gadites, and

Golan (in Bashan) of the Manassites.

19. 2. Thou shalt set apart three cities in the midst of the land which JHVH thy *Elohim* giveth thee (Canaan, the land west of Jordan).

19. 3. Thou shalt construct a road, thou shalt divide thy land into three districts, that every slayer (*roṣeah*) may flee thither (*la-nus shamah*).

19. 4. This is the law of the slayer (*debar ha-roṣeah*), who shall flee thither that he may live :

Whoso killeth his neighbour *bi-bli-da'at* (unwittingly), not hating him (*lo sone-lo*) before.

19. 5. As a man goeth with his neighbour to the forest to fell trees, and his hand fetcheth a stroke to cut down a tree, and the head slippeth from the helve and hit his neighbour that he die, he shall flee to one of these cities that he may live.

19. 6. Lest the *go'el ha-dam* pursue the *roṣeah* while his heart is hot and overtake him, because the way is long, and slay him (*we-hikkahu nefesh*), though it was not a case for capital punishment (*mishpat mavet*) ; he not hating him before.

19. 7. Wherefore . . . set apart these three cities.

19. 10. Let not innocent blood (the blood of the *naḳi, dam naḳi*) be shed in thy land which JHVH, thy *Elohim*, giveth thee for an inheritance, and thus blood-guilt (*damim*) come upon thee.

19. 11. If a man hate his neighbour and lie in wait for

him (*we-arab lo*) and come upon him (*we-kam 'alaw*) and kill him, and then fleeth to one of these cities.

19. 12. The *zikhne-'iro* shall send and fetch him thence and deliver him into the hands of the *go'el ha-dam* that he may die.

19. 13. Pity him not, but put away *dam ha-na'hi* (blood-guilt for the innocent) from Israel, that it may go well with thee.

19. 15. One witness (*'ed ehad*) shall not be heard against any man for any *'awon* (crime) or *hattat* (misdemeanour) with which he may be charged. By the mouth of two *'edim* or of three *'edim* shall the matter (*dabar*) be established.

THE NUMBERS TEXTS

The Numbers texts are as follows :

Numb. 35. 11. Ye shall appoint you cities to be cities of refuge (*'are miklat*) for you, that the slayer (*ro'eseah*) may flee thither who killeth any person unwittingly (*bi-shgagah*).

35. 12. And they shall be unto you cities for refuge (*le-miklat*) from the *go'el*, that the slayer (*ro'eseah*) die not, until he appear before the *'Edah* for judgement.

35. 13. And of these cities which ye shall give there shall be six *'are miklat*.

35. 14. Ye shall give three cities east of Jordan and three cities in the land of Canaan, which shall be *'are miklat*.

35. 15. These six cities shall be for *miklat* for the Bne-Israel for the *ger* and for the *toshab* among them, that any *makkah-nefesh bi-shgagah* may flee thither.

35. 16. If he smite him with an instrument of iron that he die, he is a *roṣcaḥ*; *mot yumat ha-roṣcaḥ*.
35. 17. If he smite him with a stone, wherewith he may die, he is a *roṣcaḥ*; *mot yumat ha-roṣcaḥ*.
35. 18. Or if he smite him with a hand-weapon of wood wherewith he may die, he is a *roṣcaḥ*; *mot yumat ha-roṣcaḥ*.
35. 19. The *go'el ha-dam* shall put the *roṣcaḥ* to death; (*be-fig'o bo*) when he meets him he shall put him to death.
35. 20. Or if he thrust him of hatred (*be-sin'ah*) or hurl at him by lying in wait (*bi-ṣdiyah*) and he die;
35. 21. Or if in enmity (*be-ebah*) he smite him with his hand that he die, the smiter (*ha-makkeh*) shall be put to death (*mot yumat*); he is a *roṣcaḥ*.
35. 21 b. The *go'el ha-dam* shall put to death the *roṣcaḥ* when he meets him (*be-fig'o bo*).
35. 22. But if he struck him suddenly without enmity (*belo-ebah*) or have hurled a weapon at him (*belo-ṣdiyah*) without lying in wait,
35. 23. Or without looking (*beli-re'ot*) let fall upon him a stone wherewith a man may die and he die, not being his enemy (*oyeb*), nor seeking to harm him:
35. 24. The 'Eidah shall judge (*we-shafetu*) between the *makkeh* (slayer) and the *go'el ha-dam*, in accordance with these *mishpatim*.
35. 25. The 'Eidah shall deliver the *roṣcaḥ* from the hand of the *go'el ha-dam*, and the 'Eidah shall deliver him to his 'ir *miḥlat* whither he had fled, and there he must abide until the death of the *kohen ha-gadol* (who has been anointed with the *shemen ha-ḳodesh* (holy oil)).

35. 26. If a *roṣealḥ* go out of the bounds (*gebul*) of his 'ir *miḳlaṭ*, whither he had fled;
35. 27. And the *gō'el ha-dam* come upon him (*maṣa*) beyond such bounds, the *gō'el ha-dam* may put the *roṣealḥ* to death (*we-raṣaḥ*). There will be no blood-guilt for him (the *roṣealḥ*) (*en lo dam*). Cp. Exod. 22. 1, 2 (2, 3).
35. 28. For he should have remained in his 'ir *miḳlaṭ* until the death of the *kohen ha-gadol*. Only after the death of the *kohen ha-gadol* may the *roṣealḥ* return to his *aḥuzzah*-land.
35. 29. So these shall be for you *hukḳat-mishpaṭ* in all your *moshabot*.²
35. 30. A *makkeh nefesh*: By the utterance of witnesses (*lefi 'edim*) shall he (the *gō'el ha-dam*) put to death (*yirṣaḥ*) the *roṣealḥ*. One witness may not testify in a capital case (*be-nefesh la-mut*).
35. 31. Take no *kofer* for the life of a *roṣealḥ*, who has been sentenced (*rasha'*) to death (*la-mut*); he must be put to death (*mot yumat*).
35. 32. Moreover, take no *kofer* from one that hath fled to his 'ir *miḳlaṭ* to permit his return into the canton (*ba-areṣ*) (from the federal city) before the death of the *kohen*.
35. 33. Ye shall not pollute the land wherein ye are: for blood-guilt (*ha-dam*) pollutes the land, and the land cannot be purified of the blood (*lo-yekuppar la-dam*) shed in it, save by the blood of him that shed it (*shofek*).

² For *moshabot*, comp. Lev. 23. 21, 31; Num. 15. 2; and especially Num. 31. 10; Ezek. 6. 6, where the several cities are conceived as constituent parts of larger districts called *moshabot*.

THE JOSHUA TEXTS

- Josh. 20. 2. Speak to the Bne-Israel, thus: Appoint 'are *ha-miqlaṭ* whereof I spoke to you through Moses.
20. 3. That the *roṣeaḥ* may flee thither (*makkeh-nefesh bi-shgagah bi-bli da'at*); they shall be for you *miqlaṭ* from the *go'el ha-dam*.
20. 4. When he that fleeth to one of these cities stands ('*amad*) at the gate (*ṭetaḥ sha'ar ha'ir*), he shall state his case (*debaraw*) to the *zikhne ha-'ir* of that city. They shall receive him into the city, and assign him a place of abode.
20. 5. If the *go'el ha-dam* pursues him (and demands his surrender), they shall not deliver the *roṣeaḥ* into his hand, for he smote his neighbour unwittingly (*bi-bli-da'at*), not hating him before.
20. 6. He shall abide in that city until he stand ('*ad'omdo*) before the '*Edah* for judgement (*la-mishpat*) (and if the judgement be in his favour) till the death of the *kohen ha-gadol* for the time being. Then shall the *roṣeaḥ* return to his city and his home (to the city whence he had fled).
20. 7. The cities appointed (*wayakdishu*) were:
 Kedesh in Galilee, in Mount Naphtali;
 Shechem, in Mount Ephraim; and
 Kiryath Arba (which is Hebron) in Mount Judah.
20. 8. And east of Jordan:
 Bezer in the wilderness upon the plain of the
 Reuben tribe;
 Ramoth in Gilcad, of the Gad tribe; and
 Golan in Bashan, of the Manasseh tribe.
20. 9. These are the '*are ha-mu'adah* for all the Bne-Israel and for the *ger* who sojourns among them to

flee thither—every *makkeh-nefesh bi-shgagah*—that he die not by the hand of the *go'el ha-dam* until he stand (*'ad'omdo*) before the *'Edah*.

THE LEVITICUS TEXTS

Lev. 24. 17. He that killeth any man (*kol-nefesh adam*) must be put to death (*mot yumat*).

24. 21. . . . He that killeth a man (*makkeh adam*) shall be put to death (*yumat*).

In approaching the examination of these important texts, it is well to keep in mind that our object is to ascertain the view of the Hebrew mind upon homicide in general. We wish to learn, first, whether it was viewed as a trespass against private persons, and therefore adjustable by those immediately interested, or whether, on the other hand, it was viewed as a crime of such gravity against the state that the private wrong incident thereto was extinguished by being merged in the injury inflicted on the state.

We ought, secondly, to determine what tribunal or tribunals had jurisdiction of the matter, and the manner of their procedure.

Our third point will be to discover what we may respecting the execution of the judgement, and, incidentally, to learn the modes of punishment that were practised.

These inquiries, of course, relate to homicide as a legal wrong, and not to excusable or justifiable homicide.

It is obvious that the killing of a public enemy in war does not constitute the offence, since such enemy, so far from being within the peace or protection of the state, is under its ban, as one whom it is useful and meritorious to destroy. Blood so shed is called war-blood (*deme milhamah*) (1 Kings

2. 5), and for its shedding no blood-guilt (*damim*) arises either against the individual slayer or against the community.

A striking example of this doctrine, which persists even to our own day, is given in the thirty-first chapter of Numbers. War having been declared against Midian, the arch-enemy of Israel, the army gained a great victory. When the officers reported their action, Moses was wroth with them, because they had spared alive some that he deemed the most dangerous of Israel's foes.

Curiously enough, with this view of the matter there was mingled another sentiment at variance with the first. Though it was the army's duty to slay enemies at war with the state, yet even this high purpose did not relieve the slayer from the necessity of purifying himself, there being implied in this the thought that homicide, however justifiable or meritorious, is never quite blameless.

'Do ye abide without the camp seven days: whosoever hath killed any person, and whosoever hath touched any slain, purify yourselves (unsin yourselves, *tithatte'u*, from *het*, sin) on the third day and on the seventh day, and also your captives' (Num. 31. 19).

The peace or protection of the state was, in ancient Hebrew law, supposed to be conferred, not only by the state directly, but by the several cantons or districts as representing the sovereignty of the state, and also by the king himself as the personal incarnation of the sovereignty.

One of the striking episodes of Hebrew history illustrates this: Abner was the general-in-chief of King Saul's army, and cousin to the king. After Saul's death and David's assumption of the crown of Judah, it was Abner who sought to perpetuate the dynasty of Saul by crowning Ishbosheth king over Israel. Civil war followed, Abner leading the

forces of Saul, and Joab the army of David. They met at Gibeon, and Abner was defeated and started to retreat. Asahel, a younger brother of Joab, started in pursuit, flaming with desire to meet the great warrior in single combat. The latter declined, but the fiery youth would not abandon his purpose, whereupon Abner accepted his challenge and slew him (2 Sam. 2. 8-23).

Subsequently, Ishbosheth quarrelled with Abner, and the latter, out of revenge, offered to David his sword, and his influence to make the King of Judah King of all Israel. His negotiations to that end being largely successful, he, at David's invitation, visited the latter's capital, Hebron, to close the matter. David received him with great honour, and when the treaty was concluded, dismissed him, and he went 'in peace' (*be-shalom*) (2 Sam. 3. 21, 22).

When Joab returned from an expedition and learned what had happened, he was in a fury, and angrily chid his royal master for what he deemed a piece of atrocious folly. He did not stop there, but sent lying messengers after Abner to lure him back by a pretended message from King David. They succeeded too well. Joab met him at the gate of Hebron in pretended amity and stabbed him to death (2 Sam. 3. 23-7) under the pretence that the hostilities which caused Abner to slay Joab's brother Asahel were not yet ended.

David's indignation was boundless, but he was powerless to break with the great chieftain. When, however, his death was near and he communicated his last wishes to his son Solomon, he charged the latter not to let Joab's hoar head go down to Sheol in peace (*be-shalom*), because he shed war-blood (*deme-milhamah*) in peace (*be-shalom*) (1 Kings 2. 5).

The moral of this is plain. Though Judah and Israel had not formally concluded peace at the time of Abner's death, yet the latter was in treaty with David, had visited Hebron on the latter's assurance, in short, was in the king's peace and under his protection, and so being, was foully murdered by Joab.

This doctrine of the king's peace, or the peace of the state, as a protection against homicide, is of the first importance, since its rise marks the era when homicide, from being a private wrong, has become the concern of the state.

An interesting old text, belonging to the *zikne ha-ir* law, well illustrates that the doctrine had at an early period penetrated to every corner of the state. It is contained in Deuteronomy (21. 1-9).

One is found slain in the field. There is no clue to the murderer. The peace of the state has been violated. As the cities are near each other, accurate measurements must be made in order to ascertain the distance between the place of the crime and the various adjacent cities. Comparison of these distances establishes which is the nearest, and upon it rests the immediate responsibility. In the language of the day, the blood-guilt (*dam*) is upon it, and in order to be relieved of this burden (forgiven, *nikkaper*), solemn ceremonial disavowal is necessary. The *sekenim* measure (21. 2); they wash their hands over the sacrificed heifer (21. 6); they make their solemn protestation of innocence and ignorance: 'Our hands have not shed this blood; our eyes have not seen' (21. 7). And although in one verse (3) the *shofetim* are brought in, and in another (5) the *kohanim bne-Levi* appear, they seem to have nothing to do. Indeed, verse 5 is a commentarial exposition of

a reason for inserting the *kohanim bne-Levi*, and runs thus: 'For them JHVH thy *Elohim* hath chosen to minister unto him and to bless by the *Shem* of JHVH, and by their pronouncement shall every controversy (*rib*) and every assault (*nega'*) be decided.'

That this general assumption of responsibility for a man's life was assumed by the state itself, is clear from such passages as these:

'That *dam na'ki* be not shed in thy land, which JHVH thy *Elohim* giveth thee for an inheritance, and so blood-guilt (*damim*) be upon thee' (Deut. 19. 10).

'Thou shalt put away *dam ha-na'ki* (the blood-guilt for the innocent) from Israel' (Deut. 19. 13).

Perhaps the most striking passage on this subject is Genesis 9. 5: 'Your life-blood will I require from beast and man, from every man's brother (*ish ahiw*) will I require the life of a man.'

The doctrine of double blood-guilt is here clearly indicated. There is first, the primary blood-guilt incurred by the perpetrator, which is expressed by the first half: 'Your life-blood will I require from man (*mi-yad ha-adam*)', i. e. from the slayer. Then follows the secondary blood-guilt of the whole community, whose bounden duty it was to prevent, or at least to punish, the crime: 'At the hand of every man's brother (*ish ahiw*) will I require the life of man.'

By this expression, *ish ahiw*, is meant the community as a whole. Instances of its use in this sense are abundant, as the passages here indicated will show: Exod. 10. 23; 16. 15; Lev. 25. 46; Num. 14. 4; 2 Kings 7. 6; Jer. 13. 14; 25. 26; Ezek. 4. 17; 24. 23; 33. 30; 47. 14; Hag. 2. 22; Zech. 7. 9, 10; Mal. 2. 10; Neh. 5. 7.

The killing of a public enemy in war is, however, not the only form of justifiable homicide. A person condemned to death by law may, by virtue of such condemnation, be killed by the person or persons designated by law, and as such killing is the performance of a public duty, no blame attaches therefor. In the case of Achan, who was condemned to death by the oracle, the execution is fully described. Joshua and the great council (*Kol Israel*) took the condemned to the place of execution. Joshua announced his doom in JHVH's name, and *Kol Israel* stoned him to death (Josh. 7. 24, 25).

In the case of the blasphemer of the *Shem*, JHVH Himself gave directions for the execution by the '*Edah*. Moses communicated them to the '*Edah* (*bne-Israel*), and they stoned the convict to death (Lev. 24. 14, 23).

In the case of the sabbath-breaker, JHVH himself directed that *Kol ha-'edah* should stone him to death, and they did so (Num. 15. 35, 36).

One convicted of manslaughter may, if he break the bounds of his prison city, be lawfully executed. Such execution is justifiable. It creates no blood-guilt (*en lo dam*) (Num. 35. 27).

Another case of justifiable homicide is when a man defends himself against attack which endangers his life or his home. If a man kills a burglar at night (before sunrise) while breaking in, such killing is justifiable. It creates no blood-guilt (*en lo damim*) (Exod. 22. 1 (2)).

We may at this point pause and, before going further, sum up the contents of this introductory lecture.

The Hebrews in Egypt had some form of internal government and communal law. The latter was orally

transmitted, and presumably much of it was incorporated in the subsequent written law. When they conquered Palestine, they could not at once enforce this law, because the *ziḡne ha-'ir* of the various cantons had to reckon, or thought they had to reckon, with the indigenous law which was familiar to the large mass of Canaanites who continued to dwell among them. The federal delegates who were sent to the various cantons never succeeded in procuring real compliance with the Hebrew law in many important matters. Probably during the reign of Solomon began a determined effort at a thorough law reform which should sweep away the local customs and establish the supremacy of the federal law. This movement, which lasted perhaps a hundred years, ended in the final triumph of the federal law, though the disruption of the monarchy during that period retarded the full success of the movement in the Northern Kingdom.

It is the history of this struggle for law-reform which we shall endeavour to unravel from the texts.

(To be continued.)



CHAMBERLAIN'S 'FOUNDATIONS OF THE
NINETEENTH CENTURY' AND
THE CLAIMS OF JUDAISM*

BY SAMUEL SCHULMAN, New York City.

THIS book is a magnificent project, but is vitiated from the start by the author's forgetting his own observation that 'nothing is more dangerous than to attempt to construct history from a single principle' (vol. II, p. 372). While his whole work is a contradiction of this, since it turns around the Germanic race as the centre of Western civilization and culture, yet we are not surprised by this naïve statement. I find Chamberlain an author most fertile in contradictions. And indeed, no man can write twelve hundred pages crammed with word-pictures and reflections upon the most important interests of humanity, and all this to maintain a preconceived thesis, without involving himself in endless contradictions. Mr. Chamberlain shows, as every human being proves, that there is something greater even than personality, and that is truth, which often coerces a man to speak it, in spite of himself. That is why we Jews, whom he hates so much, do not worship personality, though we well recognize its importance as a creative force

* *Foundations of the Nineteenth Century.* By HOUSTON STEWART CHAMBERLAIN. A translation from the German by JOHN LEES, M.A., D.Litt. (Edin.), with an introduction by Lord REDESDALE, G.C.V.O., K.C.B., &c., in two volumes. New York: JOHN LANE COMPANY, 1913. Volume I, cii+578 pages. Volume II, vii+580 pages.

in history, but rather worship God, who is truth, superior to all personality. Thus, even Chamberlain, dozens of times, unintentionally, when off his guard, when he forgets his thesis and lets truth speak impersonally through him, brings tributes to Jew and Judaism, which are the very opposites of what he says when he is trying to make out his case.

In order to understand a book, one must read it with sympathy and place himself provisionally at the author's standpoint and criticize him from that standpoint. And this is what I intend to do. His work is very artistic, but is a poor philosophy of history, which though not so called, it practically aims to be. It is a unified creation, whose beauty is marred by a hatred of everything non-Aryan and non-Germanic, but above all, of everything Jewish. And hence, the result is the most subjective of books, most stimulating to a mature mind and of great danger for a young man. For the Jew who knows nothing of his people and his religion at first hand through his own thought and life, this book is a treacherous snare. For one whose sacred function it is to interpret the soul of Israel, it is a challenge of joyous combat. It is the Bible of Germanic fanaticism and European anti-Semitism. I do not object to Chamberlain's making the Germanic race (which means for him Celts, Teutons, and Slavs, the Northern peoples of Europe) the centre of Western history and of European civilization and culture, if he so pleases. That makes the strength of the book as an artistic work. The artist is, above all, a co-ordinating, interpreting, shaping and creative personality, and Chamberlain is a strong personality. If I could write such a book, I would make the Jew the centre of history, the creator of its

culture. In so far as, to speak with Chamberlain, religion and ethics are the very constituents of culture, as distinguished from civilization and knowledge in that tripartite division of the elements of social life, which the author makes in the second part of his work, and if culture is the highest and most creative and most individual thing for personality and race, then I could make out quite a claim for the creative and fructifying influence of Jewish genius in history. When some of our *fin de siècle* Jewish sentimentalists talk of Jewish culture as something different from, as something that can be separated from, Jewish religiosity, they talk of what is impossible. Jewish religion is the Jew's distinctive culture. Chamberlain's conception of culture is correct. So I say, I too could make the Jew the centre of history, as he makes the Teuton, and before him, the Aryan or Hellene, Hindu, and Roman. And I could do this without despoiling any other race of its merits and contributions to human progress. I would need only to remind myself of that fragment of ancient Hebrew poetry put into the mouth of Noah, which makes him say, 'May God enlarge Japhet and may He dwell in the tents of Shem'. The consciousness of Jewish individuality and worth did not imply the diminution of recognition of non-Jewish genius. What I object to in Chamberlain is the disastrous result which follows from his deliberate under-valuation and rejection of everything that is not Aryan or Germanic, and which especially prevents him from understanding, nay, makes him unwilling to grasp, the spirit of Judaism. But he dare not do justice to Judaism. If he did, it would destroy his main thesis. The very exaltation of the sufficiency of the Aryan and the Teuton implies the deliberate degradation of the Jew, except where truth

escapes him unawares. For if he once granted what the world has hitherto held, that the Jew is, *par excellence*, the people with a religious genius, and if, as he says, culture, whose constituent is religion, is superior to civilization, then he would have to grant the excellence of the equipment of the Jewish genius and Europe's dependence upon it for its culture. And that is what in his rôle of a man who would keep the 'alien Asiatic people' far from himself, he cannot do. And here we reach the very heart and spirit of the book, its motive and method. The heart and motive are for me given in the remarkable passage on p. 258 of the second volume. He says: 'In Jesus Christ absolute religious genius had entered the world.' 'No one is so well adapted to hear this divine voice as the Teuton.' 'And yet the Gospel disappeared and the great voice is silent.' Chamberlain is here speaking towards the end of the book, after he had developed his main theme, of the corruption of the Christianity of Christ. Why? He tells us: 'For the children of the chaos will not abandon the sacrifice by proxy, which the better spirits among the Hellenes and the Hindus had long ago rejected and which the pre-eminent Prophets of the Jews had centuries ago laughed out of court.' Even the Reformation does not cast it off. He very shrewdly says: 'And this throws the preponderance of the importance of the Reformation into a purely political sphere.' He adds in a note: 'Even Luther (although he laid stress on faith) teaches the doctrine that even the unbeliever breaks with his teeth the body of Christ' when he partakes of the Lord's Supper. Evidently nothing in organized Christianity, as it exists to-day, satisfies him. He needs a new religion. Why does not some Teuton create it for him? He concludes this line of thought by

saying: 'In the want of a true religion that has sprung from and is compatible with our own individuality (he means evidently, Christ's teaching, as echoed in Teutonic hearts), I see the greatest danger for the Teuton.' For him, therefore, the only shortcoming and weakness of the Teuton, and therefore the danger for him, is his inability to create religiously. And Jesus is for him the 'absolute religious genius' whose gospel the Teuton, when genuine and uncorrupted, has always understood. Therefore, the Teuton, we would say, is for culture, in great measure, dependent upon the Jewish race. But Chamberlain turns away in horror, all through the book, from the thought that there could be anything in common between a Germanic and a Jewish spirit. Therefore, he does something which gives us the spirit and method of his whole book. It is pathetic to see this man, in the depths of his soul, attracted by the personality of Jesus, finding absolute religion in his gospel, in a word, the German at the feet of a son of Israel, and yet, all the time, loathing the Semitic race and the Jew his possible neighbour, competitor and brother in culture. He therefore perpetrates the third chapter of his book, whose spirit and method determine the purpose of the whole. In this chapter, he tells us, speaking of Palestine, at the time of the birth of Jesus: 'Only one race at that time was pure—the Jewish. That Jesus Christ did not belong to it is certain.' 'Every further statement is hypothetical.' This is the act of a fanatic who lays down a dogma, because the salvation of his whole theory, upon which he builds his book, is dependent upon it. It is a certainty for him, but it is not the act of a fair, historical writer who only seeks truth and must find that he has no facts with which to refute a universal tradition. Of course,

as we shall see, such dogmatism involves him in a mesh of contradictions. But what we must note here is the psychology of the author's work. Jesus *must* not be a Jew, and the Jew on his hypothesis *must* be the most irreligious, unmythical, rationalistic, materialistic, slavish soul, and what-not amongst men. so that he prove the very foil and contrast to the man who, it is believed, brought salvation to the world, to the 'absolute religious genius'. It is, after all, an old method. The theologians made Judaism a caricature in order to exalt the divinity of Jesus. Now the race theorists, borrowing the information from the theologians, and copying their methods, echo and add to their misrepresentation of Judaism and make their own original contribution of the statement that, by race, Jesus was not a Jew at all.

Chamberlain operates with certain leading ideas. He emphasizes the importance of race, nation, personality, the creative idea in history. He brings out profoundly the significance of religion for culture. He distinguishes culture from civilization, from the 'anonymous forces'. He calls attention to the dependence of human culture upon the leading personalities—Plato, Kant, Goethe, and so forth. With all of this one may sympathize, though it will be necessary to say something to supplement and modify some of these conceptions. And yet he has created a distorted picture of the development of humanity. His greatest service is to have brought out in a popular work the intimate relation between Hindu religion and mythology, and the work of the other races of the so-called Aryan group. His greatest defect is to have turned a philosophy of history into a veritable crusade against the non-Germanic world. I use the word 'crusade' advisedly, for the word

in not antipathetic to Chamberlain. He has an idea that the extension of Roman power over the world was not the result of the spirit of conquest, but rather of Rome's desire to protect itself, to make itself a home inviolate, to safeguard its individuality. And so, from a city, Rome became, in self-defence, a world empire. Thus, he would intimate, it is the duty of the Germanic race to extend its power over the world, not for the sake of conquering, but to prevent its being contaminated through mixture, and destroyed through weakness. In a word, to protect its own individuality. For the thesis is: European culture depends entirely upon the independence of the Germanic race, and the non-Germanic world, where it interferes, must be put down. His style is neither rhetorical nor flowery, nor terse and rugged. It is the intellectual eloquence of an earnest, impassioned soul. His book stimulates and challenges. Sometimes it disgusts. It never bores and always sets to thinking. It is the offering of a brilliant mind who has assimilated the knowledge and culture of Europe, but according to Jewish law, it cannot be accepted on the altar of truth, because it is the gift of a mind prostituted by a colossal prejudice and a boundless race antipathy.

The scope of the work is indicated in the title. Here is the nineteenth century, with its great controversies dividing men into Christians and Jews, into Protestants and Catholics, into individualists and socialists, into racialists and humanitarians, into the vindicators of the principle of nationality as against the upholders of universal empire,—an idea inherited from Rome and incorporated in the Roman Catholic Church,—into materialists and idealists, into glorifiers of the bigness of our civilization with its steam, electricity, machinery, &c., and prophets of individual

culture and artistic personality which such civilization tends to overawe and level ; into universal democracies, dominated by rule of majorities and great ideas which should rule men ; into European powers that reach out to the ends of the earth, and non-European races, who are becoming conscious of their individualities, their right to live and develop. Here is this century,—how shall I, a thinking man, take my place in it with respect to these controversies ? In this sentence, I attempt to summarize the task of the book. It will show how crammed such a book must be with opinions on science, art, religion, philosophy, politics, social economy, anthropology, and much more. It is a tremendous summary of the achievements of the human spirit, teeming with information and misinformation, scintillating with brilliant *aperçus* and bristling with the meanest kinds of slurs and insults for the Jew. It is a powerful work, which calls for a book to answer its misstatements and false theories.

To the question what is struggling in the hearts of men of the nineteenth century, with certain blood in their veins, with certain *plis de pensée*, determined by race, he gives the answer in his book. We must inquire into the foundations of this century. He does not describe the century itself, but analyses the factors which go to make it up. This manner of treating the subject is, in my opinion, not merely governed by methodological considerations, but is a question of utility as determined by his thesis. If he had examined the nineteenth century in detail, he would have been compelled to admit the great service which Jewish ability gave all along the line in this century of Jewish emancipation in the Western World. We must inquire, he holds, what we have inherited, who we are, and we must become

conscious of the fight which had been waged for that heritage in the past. Chamberlain believes only ideas have power in history. Ideas are expressed clearly in personalities of pure race. Only pure races are creative. Race individuality is guarded by nationality, and its greatest foe is mixture of races of the wrong kind, which produces hybridism, mestizos on the one hand, and on the other hand the universal world empire, which would level men and blot out their individualities by universal law, order, power, authority, and dogma. Characterless mongrel races lent themselves to the forming of the later Roman empire, where Syrian and African mestizos, no longer pure Roman, sat on the throne, and to the establishment of the world power of the Roman Church. If Chamberlain can be said to hate anything more than the Jews, it is the Roman Catholic Church. Great geniuses, creative originators are always the products, he holds, of a nation of pure race. Culture is not the product of humanity, but of particular races and particular men. And only these can be said to progress or degenerate. He does not believe in the idea of general progress. There exists for him no humanity. European culture is the product of a particular race, the Germanic race, in the large wide sense mentioned above. And the struggle has been to save the heritage, with which Western history begins, from the corruption brought about by its entering a hybrid mixture, and the elimination from that mixture of the Semitic, Jewish, and mestizo elements. This elimination is finally accomplished by the Teutons. History begins for him only with Jesus. He rejects the terms 'Middle Ages and Renaissance'. What is called renaissance was rather a real-birth of the Germanic spirit. 500 and 1500 are for him most important dates. The

thirteenth century is the decisive century. A century rich indeed in the most variegated activities in science, art, industry, discovery, state building, and religion. It is only influenced by the Semitic element in so far as it must fight it. The victory seems, at the beginning of the thirteenth century, to have been won by Rome, which is all powerful. But whereas the struggle will continue in the individual breast, because of conflicting tendencies, things have been clarified by this time. The Teutonic race becomes conscious of itself and the victory is really for it. He, therefore, divides his work into two parts: the first part consisting of eight chapters, devoted to the heritage, the heirs, and the struggle in Religion and the State, from pages 1 to 1,200, which really ends the book, according to its plan, and the second part, the ninth chapter, devoted to a description of what Teutons, when clarified and emancipated from Rome, that was the organizer of the chaos of mixed races and the inheritance of Semitic chronology and history, are at last able to accomplish. Christianity is for him a hybrid. The Teuton's curse was that he thus inherited it. This is briefly the gist of Chamberlain's historical construction.

The Western World inherits in the beginning from Greece Hellenic art and philosophy, but of the Greeks themselves he has no high opinion. They were 'fickle, faithless'. Their leaders run away to the enemy. 'No being is more immoderate than the Hellene, the preacher of moderation (*sophrosune*) and the golden mean.' But it inherits from the Greek also things he does not like. scholasticism, rationalism, superstition, mysteries, and the soul-cult. And these things come afterwards to be shaped into Christian dogmas. From Rome we inherit law, the idea of the state, family, love of country. He is enraptured

with Roman law, and in his enthusiasm he says in a note the following: (By the way, his most hateful things against the Jews, such as impugning the honesty of Moses Mendelssohn, treating with contempt Spinoza, insulting the memory of Renan by accusing him of having been in his latter years in the pay of the Alliance Israelite, casting a slur upon Jewish scholars, and saying that the time will come when German socialists will tell Karl Marx to go and busy himself with his own people—all these things which show the spirit of the man, are in the form of notes). He says, it is a question whether 'in Teutonic countries, men of Jewish race should be appointed judges, whether they really understand and feel the law which they use so masterfully'. Here is the historian in the rôle of the political anti-Semite! Chamberlain praises the Roman law because it was the creation of a people that fulfilled the two conditions necessary for its making. It had great moral character and acute intelligence. Has it ever occurred to our author that the Jewish people, with its tremendous ethical passion, with its high moral ideals, with its respect and love for the family, with its inculcation of practical virtues and, at the same time, with its acute intelligence, with its keen analytical powers, were just a people to create legal conceptions and a great body of law? And yet, this philosopher of history does not even mention the fact that Talmudic law might well take its place beside Roman law. And perhaps the intelligence of a people disciplined by Talmudic law makes it very easy for representatives of that people to become masters in any other law. And here, I would venture, as a layman, to suggest a thought which may be right or wrong, that if comparisons are to be made, perhaps the genius of the Jewish law, based on the rights

of man, is on the whole, superior to the genius of the Roman law, based on the rights of property. It is well known that the law of the Pentateuch permitted a man to go into another man's orchard and to take as much fruit as he needed for the appeasing of his hunger. He could eat as much as he liked, but he was not allowed to carry any fruit away. Furthermore, the laws which gave the poor the right to go into the fields and reap the corners, to glean after the reapers, &c., is not a law of charity, strictly speaking, but a law of justice, recognizing the right of a man to the means of a livelihood, the right to work at all events, to pick up in the fields what he needs for his subsistence. It is quite evident that here we have an expression of the superiority of the rights of men to the rights of property. Having mentioned the heritage that comes from Greece and Rome, we have lastly the heritage of Jesus—'the most important vision of all times'.

Who are the heirs to whom this inheritance is to be turned over? In the first place, it is the chaos of nations around the Mediterranean—these are brutalized races, according to Chamberlain, degraded mestizos, people, therefore, without purity, nationality, character, originality. They will lend themselves well for the building up of an empire in which nationality is destroyed, and for the mixing of all sorts of ideas and systems. They are the material for all sorts of syncretisms. Christians will not relish the following statement of Mr. Chamberlain, vol. I, p. 252: 'All foundations for historical Christianity were laid and built up by this mongrel population.' Secondly, there is the Jewish race. It alone, Chamberlain says, possessed at the time physiognomy and character, although later he will call it a bastard race. 'They were the only

people at that time', he holds, 'deserving of respect. They had faith in self.' 'Since this faith included faith in a higher being, it did not lack ethical significance.' The law 'however poor', was good in an age of lawlessness. 'Here, as elsewhere, we shall find that the influence of the Jews for good and for evil lies in their character, not in their intellectual achievements.'

If we understand the meaning of 'character' with all its implications, we can well take this as a tribute. These are the examples of the things that he says about the Jew, that escape Chamberlain in spite of himself. In connexion with this ability of the Jew to maintain a physiognomy and character in a time of universal chaos, I would say it is because the Jew had faith in himself, he did not accept Jesus, as the early Church made him, the centre of its life, and did not thus lose himself in this chaotic world. The last heir to enter upon the scene of history is the Germanic race. These three heirs, chaos of nations, the Jew, and the Germanic race, waged the fight.

The fight is within religion for Germanic Aryan ideas, according to Chamberlain, as against dogmas and superstitions. And in the State, for race, nationality, and freedom, as against empire and universalism. The curse of the Germanic race, according to him, consisted in this, that it got the heritage Christianity, as a result of the marriage of Aryan mythology, which he likes very much, with what he calls, Jewish chronistic, historic, dogmatic, abstract materialism. In passing, we may say, that dogma was altogether foreign to the Jew, and he cannot at all be made responsible for the dogmatic formulation of myths in what came to be the content of the faith of the Church. The Germanic element is always hoping, according to the author,

to disengage the symbolic value of the Aryan mythology and adding to it, by its creative effort, from the Jewish and ecclesiastical elements. According to him, if you touch mythology and destroy it, you land in Judaism. And if you retain the historic dogma, you Judaize the world. Therefore, from Paul through Augustine to Luther and to-day, there runs a contradiction through Christianity. There is dogma and superstition and chronology on the one hand and there is the life of Jesus, the Aryan myths—like Trinity and Incarnation and the conception of the inwardness of religion, as expressed in the ideas of faith, grace, as opposed to works, on the other hand. Organized Christianity is for him a hybrid.

Let us now take up this conception of Christianity and Judaism somewhat more in detail. There is nothing to say with respect to his glorification of Jesus. Jesus is for him more than man. He quotes approvingly the line from Diderot: 'This was not a philosopher, it was a God.' This is the expression of Chamberlain's faith, and faith, sincerely held, should always be met with reverence and not with argument. Only when it seeks to force itself upon others, does it expose itself to the just criticism of an analytical reason. For him, Jesus is the invisible made visible. As a favourite phrase of his, which occurs often in the book, has it, we would say Jesus presents God, as it were 'sub specie oculorum'. But when he talks of Jesus as a man and begins to analyse and appraise what was original in him, and what was opposed to and different from his being, we must have more to say than our space will allow. He has a very fanciful conception of Jesus. He tears him, in his essence, entirely out of Jewish history. He sees in him merely a transcendental idealist. He com-

pares him later to the philosopher Kant. What Kant did for philosophy, that Jesus did for religion. The substance of the teaching of Jesus is for him in the phrase 'the Kingdom of God is within you'. Although even this phrase, which runs all through his book as the very watchword and characteristic differentiation of the new revelation, and which is supposed to separate it by an unbridgeable chasm from Judaism, has, as a matter of fact, been taken by scholars to mean, according to the Greek original, 'the Kingdom is in your midst'. This, of course, is quite a different conception, and really means the Messianic Hope is already fulfilled. 'The Kingdom is already now, here on earth and I am its inaugurator', an entirely different proposition indeed from the transcendentalism which Chamberlain would see in the phrase: It is the claim that what Judaism hoped for has at last been realized. It is indeed, to speak in Chamberlain's phraseology, itself a piece of Jewish historic thought which can be disputed or argued about. Only Jesus, that is the impression we get, revealed the mysteries, which cannot be expressed in words. Only *he* taught the religion of the heart, of which, according to the author's thesis, Judaism knew nothing. Next to the phrase 'the Kingdom of God', Chamberlain emphasizes the method of Jesus. He calls it 'a conversion of the will'—'For I am meek and lowly of heart, learn of me.' Parenthetically, we would here say, this is just what separates Judaism from Christianity. Judaism permits no mortal thus to speak. The meekness of a man must be attested of him by others. The Prophetic message was always 'learn of God through me'. The Jewish Prophets reveal a law higher than themselves. They do not claim to be the concrete illustration of it which is to be imitated.

The greatness of Moses consisted in the fact that he was called meek by others. The duration of his creation, a people consecrated to God, resulted from the fact, that through his own teaching he became overshadowed by the God whose instrument he was. Jesus, according to Chamberlain, is not only the centre, but the essence, the substance of the new revelation. They therefore called him, he says, 'tree of life', 'the bread of life', 'the light of life', 'the foundation', and so forth. Jesus, he emphasizes, did not preach, like Buddha, obedience, chastity, purity. He did not deny the will to live which the Aryan Schopenhauer in the nineteenth century taught again, after his Hindu cousin. Jesus affirmed the will to live. But his 'conversion' is a war against the inner spirit of mankind, against the motives which underlie their action. He brought a 'sword' against the world's life. Chamberlain emphasizes what he calls, 'his sublime pride'. He turns the cheek, not only for the weak humanitarian's sake, but for his own sake. It is not merely the stoical self-control. It was an expression of his own way of living. 'Father, forgive them, they know not what they do', is for Chamberlain an illustration of that sublime pride. But he forgets the phrase 'My God, why hast thou forsaken me?' This would bring Jesus much nearer to ordinary humanity. It needs but to mention these things to show what a fanciful construction of the personality of Jesus Chamberlain here makes. Much truer is the ordinary conception of the man of Nazareth as a lover of his fellow men, as a sympathizer with their sufferings, as a brother, seeking to do them good, than this idea of a metaphysical transcendentalist, who turns away the will from the ordinary motives of men.

With Jesus, according to Chamberlain, begins the moral

awakening of man: 'Man rose against his animal nature', &c. This is certainly a sweeping statement and can only be explained by the completely artificial method, which the author employs to separate Jesus from the moral experience as embodied in the Jewish consciousness up to his time. When he comes to inquire as to the origins of Jesus and his teaching, he says, 'he was a Jew in religion and education undoubtedly, in race most probably not'. He criticizes Prof. Albert Réville who said that it is idle to discuss the question whether Jesus was of Aryan origin or not, boldly asserting, 'a man belongs to the nation in whose midst he has grown up'. Of such an assertion, Chamberlain says, 'and this was science in 1896!' I would rather be guided by the science of Réville, who has no preconceived thesis to maintain, than by the dogmatic speculations of our author. He becomes even more emphatic and says, 'whoever makes the assertion, Christ is a Jew, is either ignorant or insincere'. In order to make out that Jesus was no Jew, he contradicts himself in a twofold way. In the first place, in a relatively superficial way. On p. 203 of the first volume, he is talking of Galilee where Jesus was born and where lived a mixture of nations, and he says 'only political connexion, not community of religious faith, fosters fusion of races'. As Galilee was separated politically from Judea, this is to intimate the possibility that Jesus had no Jewish blood in his veins, though he was brought up in the Jewish religion. On p. 212, of the same volume, he tells us 'the very conversion to the Jewish faith gradually obliterated differences'. If the conversion to the Jewish faith, which according to the Jewish law, a law in existence now for over two thousand years, permitted marriage between Jews and non-Jewish races, obliterated differences,

then religion is more than political connexion as a factor in favouring the fusion of races and this is a contradiction of what he had said. But there is even a deeper contradiction than this. If Jesus is a Jew in religion and education, nay, if, as he is depicted, even his originality differentiating him from Buddha, he manifests Jewish and Semitic peculiarity, he is completely a Jew, according to Chamberlain's theory, by race. The favourite idea of Chamberlain, upon which he insists all through his book, is that of the *plis de pensée*, that is to say, the fold of the thought of a man is given to him by his race. However original he may be, he cannot emancipate himself from the groove, from the mould, from the category, by which his thought is shaped and which are given him, as it were, by his blood. Now, in order to separate Jesus from the Jews, he makes Jesus the negation of the Jewish religion. He conceives the Jew as the most irreligious of peoples. Judaism, it is true, is the framework for Jesus's religion, but it is the negative background upon which his positive message rises. The Semite and Jew, he tells us, in another connexion, are characterized by two things, great strength of will and the chronistic, historic view of religion. But we have just been told, Jesus emphasizes above all things, the will. It is the centre in all his teachings. In fact, his whole gospel is an affirmation of the will to live, but a conversion of it, radically departing from the ordinary motives of human nature. And on p. 246, we are told 'Christ is a Jew in so far as he believes in Divine Almightyness, in Divine Providence, in freedom of the human mind, in exclusive emphasis of the moral nature of men and in the equality of men before God'. Freedom, too, is for Chamberlain a Jewish conception as opposed to the Aryan, which

emphasizes necessity. Now, if there is anything in *plis de pensée* at all, this stamps Jesus as a Jew in race, as well as a Jew in religion. For even the transcendentalist, the revealer of the 'Kingdom within you', to speak with Chamberlain, cannot emancipate himself from the fundamental ways of thinking which, according to our author, are characteristic of the Semitic race, if there be such a thing, and above all, of the concrete things, Jew and Judaism. Thus we see in what practically absurd contradictions Chamberlain involves himself, because of his fanatical determination to separate the man he worships as divine, as the revealer of absolute religion, from the people whom he hates and whose genius he considers most antipathetic to his own Germanic consciousness. The life of Jesus, according to Chamberlain, is the main thing. This is Christianity for him. But he tears it apart, not only from everything Jewish, but also from everything that follows it in history. This is most unscientific and unhistorical. Organized Christianity is for him a departure in the main from that life. It is made up of three things: the Aryan myths, trinity, incarnation, &c., which he likes, as long as they remain myths and are not crystallized into dogmas and grace, faith, everything of an inner spiritual nature. And secondly, the scholasticism, the mysteries, the soul-cult, which came to it from Greece, and lastly, the inheritance from the mestizos, the hybrid nations, their idolatries, their conception of mother of God; from Semitism, the conception of will; from Judaism, chronology, universalism, priestly character. Rome, the great world power, organized Christianity as a hybrid mixture of these three elements, and the result is, according to him, dogma, intolerance, absolutism, and a tremendous mass of superstitions. His

idea is, therefore, that Judaism is in great measure responsible for this hybrid. As a matter of fact, as we shall see, Judaism is not responsible for its dogma, nor for its priestly character, nor, as he himself admits, for its superstitions, nor even for its desire for universal rule. On the contrary. Had Jewish ideas been adopted by the world in their purity and adapted to the various needs of varying nationalities, these consequences, which are so disastrous in the eyes of Chamberlain, would not have followed.

✓ His view of Judaism is not flattering, and is altogether based upon the most surprising ignorance. He has no knowledge of sources, no first-hand acquaintance with it. He follows slavishly the Biblical critics and their pupils. The Jew he calls a bastard race. And he explains the whole process of Jewish development up to Jesus, by the set formula with respect to Jewish law, which he repeats from his Christian theological authorities. There is nothing new in this caricature of Judaism which he presents to us. He repeats old and well-worn phrases. Our religion, he tells us, is based on fear. If he wishes to prove that there is no love in the Jewish religion, he cites a passage from the description of the conquest of Palestine. But he does not even mention that there is such a sentence as 'Love thy neighbour as thyself', in the nineteenth chapter of Leviticus, and that the Torah, lest there be any mistake in the matter, added 'And thou shalt love the stranger as thyself'. According to him, the Jewish religion simply means external observance, which is to be rewarded by a world empire. So he interprets the Messianic idea. There is no mysticism, no real faith, no heart in the Jewish religion. Whatever faith there is, is a maximum of faith in self which is merely the expression of the intense will.

There is a minimum of religion. The Jews are not at all monotheistic, because monotheism is the result of intellectual activity. This caricature of religion, according to him, came about in this way: First, the best elements in Israel were eliminated in the transportation and destruction of the tribes of the Northern kingdom. These are to him the noblest elements in Israel. It is interesting to observe that an anti-Semite always praises a dead Jew. Our crime is that we are still on the scene to be reckoned with. A second factor in the bringing about of the result which he describes, is the wonderful survival of Judah for 120 years after Jerusalem had been threatened with destruction by Assyria. This gave the prophets great power and accustomed the people to believe in the invincibleness of their God. A third factor was that Judah was torn out of its soil and transplanted to Babylon where it broke with the old national traditions. A fourth was the return of a small number, and lastly, the work of Ezra and Nehemiah who, in his opinion, imposed upon the people a law which they really did not want. Thus, by a process of elimination, there was produced Jew and Judaism—something that has little religion, but great intensity of will, that makes slaves, trembling to obey the law of the arbitrary master, who will give them as their reward the eventual mastery of the world. This is Chamberlain's wretched picture of the Jewish religion.

With respect to the charges that Judaism is responsible for the dogma, superstitions, priestly power, and the will to universal rule, which appear in organized Christianity, we must say that Chamberlain is an excellent example of the man in history, who would eat his cake and at the same time have it. The troubles in Christianity followed, in our

opinion, from the central fact which our author holds up to admiration. For him, religion is best expressed in the transcendental myth. But myth becomes a very dangerous thing when you make it the centre of a system. Its tendency is, inasmuch as there is always something intellectual in it, to crystallize into a hard dogma. When that which should remain invisible, is made visible in the form of a myth, in the form of a divine life, the trouble begins. In religion, the image worship, against which Chamberlain thunders, is the result of the idea of a God that can be seen. If once God walked upon earth in the form of a man, it is but natural that images of that man should be made and tenderly cherished. It is the popular way of expressing, what seems to Chamberlain the great virtue of non-Jewish religion, seeing things 'under the aspect of the eyes'.

Chamberlain even makes negro religion superior to the Jewish religion, because the African negroes could form myths. It was, we hold, the deliberate repression of myth by the Jewish genius that prevented the things which fill our author with so much horror. Dogma, which plays such a rôle in the organized Christianity, which our author is constantly attacking, is the result of the very thing which he criticizes Judaism for lacking. It is the result, namely, of so-called intellectual activity. It is the expression in religion of metaphysics as overshadowing ethics. Superstition is the result of giving up the law. Chamberlain himself admits that if Rome had taken the pure spirit of Judaism, which was 'opposed to all forms of superstition', instead of mixing it with other elements, so much mischief would not have resulted. Such an admission, as dozens of others which we have seen, brings unconscious tribute to

Judaism, contradicts the substance of his thesis. It is a violent misinterpretation of Jewish history, to make Judaism responsible for the hierarchic power which entered Christendom. By so doing, Chamberlain betrays his extreme superficial knowledge of Jew and Judaism. The Priest and Temple, it is true, were still in existence at the beginning of the Christian Era. The pomp of ritual and sacrifice was there, but it had already become, as compared with the real forces that were shaping the Synagogue, an empty shell. When the facts of history put an end to them, Judaism could survive. But the vicarious sacrifice, which, as we have seen above, Chamberlain denounces, was taken up by organized Christianity as a central dogma, and the priest that administered the rite became again the central figure and mediator. In Judaism, long before the destruction of the Temple with its sacrificial rites, the Priest had already become subordinated to the scholar, to the teacher, to the real leaders of the people—the Pharisees. The Synagogue was not at all a priestly institution. The Synagogue was an institution governed by learned men and teachers of the law. It was an essentially democratic institution, where only learning and character gave position and authority. And every Israelite in his own home had an altar unto God. Life became sanctified by the prayer, by the benedictions, by the rites and observances which the Pharisaic teachers created. Far from depending on a hierarchy, far from depending for salvation upon a Priest, every Israelite was made free and independent and was taught to worship God directly, without a mediator, by obeying His law and by making life holy. It is a mistake on the part of Chamberlain—if not something worse—to make it appear that Israel thirsted for world empire. Israel, as we shall

see, had indeed a great hope, which embraced all the nations of the world, but it was not intolerant, as Chamberlain intimates. It was conscious, it is true, of the necessity to maintain its own individuality. It refused to lose itself, to use Chamberlain's phrase, in the 'chaos of the nations' of the time. It felt itself called upon to be the light of the Gentiles, the religious educator of the world. But it did not condemn the world for not becoming converted to Judaism. According to Rabbinical teaching, the Gentiles earn salvation, if they observe what is called 'the commandments of Noah'. And these are the simple fundamentals of morality, justice, and order, upon which civilized society rests. In other words, not starting out with the conception of one road to salvation, as indicated once for all by one personality, Judaism did not have the motive which would impel it either to convert the world or to condemn the world refusing conversion. It was wise enough to know and to recognize the light of nature as it shone in the lives of nations. It was quite conscious of its own unique mission, but it could afford to wait. It did aim at universality, but this hope of the triumph of Israel's faith was a purely spiritual thing. It did believe that the nations would some time come to the mountain of the Lord and learn of His ways.

With respect to Chamberlain's view of Jesus, we have already intimated that it is highly fanciful. But as he himself admits Jesus was a Jew in his education, we must say that in his ethics, Jesus teaches nothing that is absolutely new, or cannot be found in the Judaism of his time, as expressed in the Bible or in early Rabbinic teachings. All one needs to do is to read Isaac H. Weiss's *History of Jewish Tradition*, or the summary of it, as given by

Prof. Schechter in his first volume of *Studies in Judaism*, to see the complete parallel between much of the ethical teaching ascribed to Jesus and the Pharisaic inwardness, insistence upon purity of motive and deepening of the law. But there is in Jesus, let us say with Chamberlain, because of his transcendentalism, an ascetic tendency. 'The conversion of the will', which overthrows ordinary motives of men with which civilization is built up, may lead to peculiar results. And in this, as in many things already noticed, you cannot tear the consequences altogether away from the premisses. It is easy for Chamberlain to say, in comparing Jesus with Buddha, 'Jesus did not teach poverty, chastity, and obedience', but rather affirmed the will to live. Nevertheless, there was a germ in Jesus's teaching which made it very easy for men to interpret it as leading to the flight from the world's temptations and to the denial of its worth. That 'sublime pride', upon which Chamberlain insists, which makes Jesus turn the other cheek, which would absolutely refuse to employ force or civil institutions to establish right or justice, can very logically lead and has led to the doctrine of non-resistance to evil. In Judaism, the duty of forgiving in personal relations, is emphasized most clearly: 'Thou shalt not bear a grudge against the children of thy people.' But, on the other hand, it is our duty to obtain justice for oneself and for others. The personal relation and the social duty are distinguished and expressed in different precepts. That the influence of Jesus in the direction of denying the use of social institutions for the expression and enforcing of moral ideas still persists, can be seen in the fact that such a great spirit as Tolstoi, whom every one would speak of with reverence, has actually interpreted the Christianity of the

gospel to be a denial of the whole structure of civil authority and its penal machinery and institutions. He has, in a word, identified the gospel with philosophical anarchism, and has seen in non-resistance to evil the very essence of Jesus's message. There was therefore, in the teaching of Jesus an element, which naturally was not only not in accord with Jewish ethics, but is incapable of being utilized for the building up of human society. What Chamberlain does not emphasize and what is very important, is the fact that Jesus saw in himself the Messiah, and thereby he makes a break with Judaism as a religion.

What is the essence of the Jewish Messianic hope? Its formulation varies according to the needs of the time. At one time, the Messiah is conceived as an ideal King. At another time, he is imagined as a transcendental apocalyptic figure. But the essence of the Messianic Hope consists in its being a wistful looking to the future. It is one thing to hope for a Messiah; it is quite another thing for a man to say, *I am the Messiah*. The realization puts an end to the hope, because of its presumed fulfilment, but at the same time destroys its value as an impelling ideal. Now, the essence of Jewish hope consists in its ideal character, and therefore, the Jew, Catholic Israel, has thus far never recognized any individual concrete Messiah that claimed its homage, because the Hope is greater than any man. When Jesus, therefore, was filled with the consciousness of being the Messiah, he could not possibly have been so acknowledged by the Jew. But any organized religion that based itself on that claim, naturally assumed that all hopes had been realized and a new world empire had begun. Here, again, the claim to world empire does not come from Judaism but from the central fact in organized Christianity.

Judaism still says, The Kingdom of God is partly in the present, but its full realization will be in the future. It looks not to the past, but to what will be. It cherishes the ideal, but refuses to recognize the full realization of it in any present condition or event. Jewish Messianism, quick to hope and hard to satisfy, is the essence of Jewish idealism.

If our author fails to understand the spiritual power of the Jewish Messianic idea, which is natural on his part, because only those who hold an idea can thoroughly understand it, and if he identifies it most unhistorically with a sort of political hunger for world-dominion, it is not to be wondered at that he does not understand our religion at all, and with his simple mechanical formula fails to penetrate to the spirit of the 'Torah'—usually translated by 'law', but embracing much more than law.

What is our Torah? What is the Law, which the Christian theologians, in their rôle of Bible critics, and Chamberlain, their follower, dispose of in one formula? As a matter of fact, it is a summary of the many elements that go to make up the many-sidedness of Jewish religion. It is an appeal to many sides of human nature. In it, there is not only law, but the element of prophecy. There is even mysticism and also myth in the profound sense of the word. Chamberlain never gives a clear definition of what he understands by religion. Sometimes, it appears ✓ that it is for him synonymous with myth. At another time, it is metaphysics. We should venture to define religion as the life of the soul in the presence of God. It is not merely feeling, nor is it an intellectual conception, nor is it merely deed, but it is the whole life of man, permeated with the consciousness of Another, God a Greater

J than man. The Jewish religion represents a maximum of faith. Not faith in the sense in which Chamberlain uses it, as faith in one's own will, but faith in the sense of conviction as to the reality of the one God, who cannot be exhaustively defined and should not be imaged. Such an intensity of faith the Jew had and he combined that intensity with a minimum of credulity, which kept his mind free and saved him from superstition, as Chamberlain himself admits. Thus the Jew was religious and rationalist at the same time. The Jew has an intense conviction as to God. He wins God by an intuition, not by an argumentation or metaphysical speculation. This intuition is to him revelation. He deliberately runs away from myth. He retains some myths that have a profound significance for thought and are richly suggestive in ethical inspiration. But the myth remains with him free, relatively isolated, subordinated. It does not become the centre of his religious life. At best, in its subordinate function, it is an illustration of truth. What the Jew does emphasize in religion is deed, action, ethics, law, duty. And is this not what the modern man is aiming at? Far from making myth the most important thing in religion, the modern man puts into subordinate position the intellectual element in religion and emphasizes the practical and the ethical. The Jewish religion thus anticipated by intuition, or theologically speaking, by revelation, what the modern man has arrived at, as a result of centuries of development. Modern religion finds myth, as crystallized into dogma, a stumbling-block. Judaism has long ago discovered this. The Jew, in his system of religious life, is governed by two great tendencies: the Halakah, or Law, and the Haggadah, literally, that which is told, and this includes everything outside of the law.

These two tendencies, brought out clearly in the Talmudic and Rabbinic literature, are, we may say, anticipated in the Torah itself. The Torah has its Haggadic element. The Jew puts all his myths into Haggadah, which is considered the free, untrammelled, spontaneous expression of the individual. The Halakah, or law, rules life. We, of course, cannot carry out this thought in detail here. Suffice it to say, that the Jew never was without the opportunity to express, in the form of myth or legend, truths and beliefs about divinity. But such expressions were deliberately left without authority. The Jewish religion, therefore, does not put creed or theology in its centre, but rather the ethical ideal and the law for the daily life. The myth of the Torah is left, as it were, in silence. No consequences are drawn from it. No dogmas are built up upon it. It stands there isolated, a relic of the individual insight and poetic conception, overawed by the demands of the higher revelation, as it grasps the thought of the one spiritual God, who cannot be imaged or portrayed, and by the law of life which this God reveals.

The Jewish religion recognizes the creative power of personalities, but its distinctive character consists in this, that it makes principle superior to personality. Not man is to be worshipped, but the Eternal who speaks through him, and the law, which is greater than he. The Jew's religion is a way of life, not given for all by a man, but expressed in a categorical imperative, which is greater than and binding upon all men. The Jewish religion is not without inwardness. All the conceptions which Chamberlain praises so much, such as grace, sense of sin, God's pardon, the love of God in the heart, faith—all

these things are part of the Jewish religious view of God's dealings with men. They are present in the Bible, they are richly developed in the Talmudic literature, they do not become the centre of the system, because the centre is always the ethical demand upon life. Man is assumed as capable of obeying the law. God, as the Talmud has it, looks to the heart. If man has done the best he can, he need not fear for his salvation. And yet, though the capacity for obeying the ethical command is assumed, the grace of God is prayed for and acknowledged as indispensable. And a Rabbi in the Talmud sums up the whole significance of the law by formulating it in one principle, quoting the Prophet's saying, 'the righteous liveth by his faith'. Judaism, feeling the infinity of God, did not attempt to formulate Him in concise, clear-cut theological dogmas. It spoke of Him according to the feeling and mood which may predominate in the soul of man. God is indeed for the Jew, at one time, the sublime uncompromising Law-Giver, insisting upon obedience, and at another time, the gracious, atoning, forgiving, loving Father. The Jew, therefore, lacked nothing of the inwardness of religion, of the feeling of communion of the soul with God, of the feeling of unworthiness in the presence of the Perfect. The prayer-book every morning makes the Jew repeat 'What are we, what is our power, what our strength, what is even our righteousness?' It is an entire misunderstanding, if not something worse, of Judaism, to see in it nothing but a law, given externally to men, enforced by fear, imposed upon trembling slaves by an arbitrary master. Judaism taught indeed that men could become free only through the law engraved on the tablets, as this is prettily expressed by a Rabbinical play on the

words *herut* (freedom) and *harut* (engraved). The Jew anticipated the conception of Chamberlain's favourite thinker Kant, by teaching men that moral freedom comes through reverence for law.

To sum up, by illustration, this whole question of the place of the free myth and the deep inwardness in the many-sided Jewish religion, I would call attention to two fragments of Israel's literature, one from the Torah and the other from the Rabbis. In the 33rd chapter of Exodus, from the 17th to the 23rd verses inclusive, we have a sublime example of the working of the mytho-poetical power in Israel's consciousness. The great law-giver says to God: 'Show me Thy glory.' 'And He said, I will cause all My goodness to pass before thee, and I will call upon the name of the Lord before thee, and I will be gracious unto whom I will be gracious, and I will show mercy unto whom I will show mercy. And He said, Thou canst not see My face, for no man can see Me and live. And the Lord said, Behold there is a place with Me, and thou shalt take thy place on the rock, and it shall come to pass, when My glory passeth by, I will place thee in the cleft of the rock and I will put My hand upon thee until I pass by, and I will remove My hand, and thou wilt see My back, but My face cannot be seen.' Here we have the conception of the perfect freedom of grace as it comes from God to man. Here we have the idea which is absolute truth, that we only catch a glimpse of Divinity when it is fleeting, that we can never see the face, or grasp the essence of God, that we can only see His back, that is to say, His effects, the traces of His work, of His influence in the universe and in ourselves. Certainly such a God could never be imaged

by art, nor articulated in dogma, nor described fully in myth, nor exhausted in any personality. And the Rabbis very beautifully, in commenting upon this passage, show that they understood the profound significance of it. They make the remark that wherever there are footprints of man in the cleft of the rock, there was a vision of Divinity. When man becomes conscious of himself and of the Greater than he, he realizes the presence of God. That presence is always revealed in effect, never in essence. The back of God we see, but never the face. I should venture to say that such a passage will hold its own for clearness of thought, for chasteness and restraint of speech, for deep religious experience, for poetic beauty, with any myth, the creation of the genius of any other people. And it is immediately after this passage that we are told that the overwhelming revelation comes to the great law-giver, in which he learns the attributes of Divinity, in which God manifests Himself as a God 'merciful and gracious, long-suffering, abundant in love and faithfulness'.

And now, for the passage from Rabbinical literature to prove the deep inwardness of Jewish religion and the utter falsity of Chamberlain and his masters, who give the impression that Judaism could not think soundly upon the questions of sin and grace, transgression and forgiveness. The following is a remarkable passage. We are told, 'Wisdom was asked: "how stands it with the sinner and his penalty?" and the answer came, "evil pursueth the sinner"'. Prophecy was asked, "what of the sinner and his penalty?" and the answer came, "the sinning soul, it will die". The Torah, or the Law was asked, "what of the sinner and his penalty?" and it said, "let him bring a sin-offering and he will be atoned for". Finally, God was

asked, "what of the sinner and his penalty?" and He answered, "let him turn away from his sin and he will be forgiven". The man that left us this fragment certainly understood the spirit of the Torah, and we have in it the complete thought of Judaism. Sin, from one point of view is a transgression of law, whose consequences are evil and suffering. That is a truth, but it is an external truth. Sin, from another point of view, is death, literally, spiritual death. This is the truth grasped from the intuitional point of view. In the Prophetic conscience, there is an absolute chasm between good and evil. The tragedy of sin does not consist so much in its consequences of suffering, as in its essence of a fall from the ideal and the ensuing spiritual death. How shall man rise above the effects of sin in himself? From the point of view of the Torah, that is to say, from the point of view of practical religion as it governs men and impresses their imagination, man should express his regret and sincere repentance by some external symbolic act. He should *do* something. He should bring an offering. He should make an atonement, as the first-fruits of his change of heart. There must be action. And indeed, ceremonial action in religion is not to be despised. It is the specific way in which the religious life expresses itself. The action expresses the feeling, and, conversely, the external deed reacts on the feeling, intensifies it and makes it a permanent influence. Now comes the climax. After all is said and done, the deepest truth about sin refers to the relation of the human soul to God. And God is made to give the simplest possible answer. 'Let the sinner but turn from his way', let there be a genuine conversion of the heart and will and the sinner need not despair. Life begins for him anew, fresh, with

new hope and joy. If the sinner turns, God will forgive, because God is Perfect Love and Grace. In the climax, we hear no more of consequences, of the terrible significance of sin, of the value of ritual and symbol as aids. We have reached the 'holy of holies' of the inwardness of the relation of the human soul, the child to God, its Father in heaven. Such a passage, once for all, should shut the mouths of those who ignorantly babble about the lack of inwardness in Judaism.

✓ We hold, therefore, that Judaism is not responsible for the dogma or the superstition or anything else that fills Chamberlain with so much horror and disgust in what he calls the hybrid of historical Christianity. It is not our business here to give any opinion on the religion of Christendom. We are simply trying to analyse Chamberlain's conceptions and showing their utter untenableness, as far as the Jew and Judaism are concerned, because they rest on either an ignorant or a wilful misunderstanding of the Jewish spirit. And if we have proved such misunderstandings, and if we have, though ever so inadequately, given some true glimpses of Judaism, as a moral and spiritual power in the world, we have vindicated the creative power of Jewish genius and we have shown that in Jewish religiosity at its best, the Western World finds that spiritual culture which has fructified it and without which it cannot do. If the nations had adopted Judaism in its purity, they would have had a different development. They would have adapted its laws to their own circumstances, even as Israel kept constantly adapting its own law, through the moulding and shaping force of tradition, or what is called the oral law. For Judaism was never bibliolatrous. The letter

did not constrain, contrary to the usual assumption. And the nations would have saved themselves from mysteries and myths made dogmas, from the materialization of religion. They would have put into the centre of their religious consciousness, the conception of the moral ideal governing human life. The Jew did not lose himself in the 'chaos'. He did not abdicate his mission. That is why the Jew waits. He has a conception of humanity in which he believes, but humanity for him does not mean the obliteration of strong nationalities or personalities, but rather their education. The union of the world for him, was not pre-figured by the sway of a universal dogma based on a scheme of salvation, but by a union of peoples, recognizing the world's God and seeking to learn of His law. If we look at race, as laymen, even as Chamberlain professes to do, we shall not minimize its influence, but at the same time, we shall not magnify it. Idea, we hold, is greater than race. Race is plastic and capable of being influenced by ideas. Otherwise, we would have to believe in a fatalism which would prevent the hope in education. The Jews and Judaism did *believe* in humanity and progress. We take no such pessimistic view as does Chamberlain, that progress is limited only to individuals and to certain races. And we do not consider 'humanity' merely an abstraction. We hold that the Biblical conception of man being made in the image of God, puts the ideal, as is proper to the religious point of view, in the beginning. What Chamberlain treats with contempt, the chronistic, the historic view of Judaism, has sublime aspect. To be paradoxical, I would say, that is the peculiarly distinctive way in which the Jewish mythical faculty expresses itself. The goal of the human race is anticipated by the Jewish

religious genius, and made to appear as the driving idea of history from the very beginning. Potentially, humanity begins as one. Actually, it will become one, when it is completely educated and perfected. The essence of the Messianic hope is this,—education, progress, and perfection. Not for one race, but for all races and for all men.

We Jews must emphasize religion and not our race. I differ very much with Felsenthal and other Zionists, whom our author quotes with approval. Our religion is not as Felsenthal has it, an 'accident' in the philosophical sense. It is substance. It made the Jew what he is. It is not only one side of the Jewish consciousness, which he may drop or not, as he chooses. It is the whole thing about the Jew. Our nationalists take the stand of Chamberlain. We are, however, not a nation in the usual sense of the word. We are God's people, and can belong to any people, and co-operate for that people. Chamberlain himself says the Jewish nation is only an idea and a hope. But this idea makes Jewish individuality. The idea transcends ordinary nationality. The Jew is the servant of this idea. He, as one of our prophets put it, is the servant of the Eternal. And this idea is Jewish culture, this idea is Jewish life. And, strictly speaking, a Jew without a God and without consciousness of service to Him, has ceased to be a Jew in spirit. With the Jew, God is always the centre. Chamberlain, correctly, as in so many other instances, gets at this thought when he says in a note, 'Jews are either theists or atheists'. 'With us *Germanen*', he says, 'the centre is either the mother of God, or the Redeemer.' In this statement, Chamberlain, of course, wants to point out how quickly the transition may be for the Jew from theism to atheism

Once he departs from the invisible spiritual God, he may lapse into atheistic denial, because he has nothing which shall present to him the Eternal 'sub specie oculorum', to make it visible for him. Chamberlain would argue from this that the Jew is poor in religion. I hold that this is the great, even if difficult, privilege of the Jew that he is called upon to live on the heights of a *faith, which is to cling to the God that cannot be seen*. Chamberlain is right in his understanding that for a Jew, God must be the centre of his thought, or his Jewish consciousness is lost.

We have made a rather lengthy examination of this brilliant though bigoted and prejudiced work, and yet, we could not possibly, within the space at our command, do full justice to the theme. We have, however, attempted to show, and hope that we have been successful in showing, the peculiar psychology which made Chamberlain write this book. Chamberlain dislikes the Semite, and above all, the concrete neighbour, the Jew. He feels in the depths of his being that what is best in the religious consciousness of the Western World came from a Jew. He admits that the Western World, and what he is most interested in, the Germanic world, has thus far not been creative in religion. If our analysis has any measure of truth, we would say, the Teutons need Jewish religious culture very much. In fact, they are still living by the best that Jews gave them. Let not Chamberlain be afraid. He likes 'love' better than 'fear' in religion. Judaism has place both for fear of God and for love of God. A great German, Bismarck, said: 'Wir Deutsche fürchten Gott, sonst keinen.' 'We Germans fear God and no one else.' All great men knew what 'fearing God' meant.

You can love Him, but you must not get too familiar with Him. Your place is on your knees in reverence before Him and the majesty of His Law. But while Chamberlain likes 'love', let him not do a great injustice to his great Germanic people by preaching a gospel such as this whole book, the essence of which would practically amount to the following war-cry: 'Wir Germanen lieben uns selbst, sonst keinen.' 'We Teutons love ourselves, but no one else.' One can admit the greatness of the Germanic peoples—what they did for the world. One need not disparage the greatness of the Jewish genius and what *it* did for the world. I profoundly believe that there is not only great opportunity, but great necessity for the harmonious co-operation of Jewish religious and ethical genius with Germanic creative power for the progress and benefit of humanity. Chamberlain has done his people a great injustice. They are, on the whole, much broader-minded than he. The Jewish conception is that of a self-conscious obligation to serve the Eternal. Israel's distinction is that of duty. It feels itself to be at the centre of human history, placed there by Divine Providence. But it has a message of love and appreciation for all peoples and it despises none.

STUDIES IN THE BOOKS OF SAMUEL

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I

DAVID'S THREE POEMS

THE prose history of David's reign, as it lies before us in the Second Book of Samuel, contains three poems ascribed to David, and inserted in different, and, on the whole, appropriate, places of the history: (1) an Elegy on the death of Saul and Jonathan, given by the historian at the conclusion of his narrative of the arrival to David of the news of the death of the heroes (2 Sam. 1. 19-27); (2) a Hymn on his triumph over his enemies, placed after the last narrative of his wars (ch. 22); and (3) an Oracle on the perpetuity and prosperity of his dynasty (23. 1-7), which follows immediately upon the Hymn of Triumph, apparently because it forms an appropriate sequel to the last verse of the Hymn:

מגדיל ישועות	מלכו
ועשה חסד	למשיחו
לדוד ולזרעו	עד עולם.

There is also another brief elegy on the death of Abner (3. 33-4), which we leave out of consideration for the present.

These three poems present many great difficulties, both textual and exegetical. Much has, indeed, been done by the well-known modern commentaries to elucidate and

remove these difficulties, but a great deal more still remains to be done before we can lay claim to a full understanding of these poems. In particular, the commentaries have failed to give a satisfactory explanation of the structure and form of the poems. The latest efforts in this direction, those of W. Rothstein, 'Die Klagelieder Davids', and of O. Proksch, 'Die letzten Worte Davids' (both published in *Alttestamentliche Studien für Rudolf Kittel*, Leipzig, 1913), can hardly be described as a success. Rothstein is actually compelled to delete a full third of the Elegy as spurious, in order to carry out his artificial reconstruction of the poem in accordance with the *kinah* metre. The result, as might be expected, is a very sad mutilation of that beautiful elegy. In the following inquiry a new attempt will be made, without resorting to extravagancies, to recover the original form of the poems, and also, at the same time, to elucidate some of the difficulties in the text.

1. THE ELEGY ON THE DEATH OF SAUL AND JONATHAN

This beautiful lyric, the genuineness of which is conceded by all critics, lacks, as it now stands in our text, all unity of form and of plan. Yet our poet displays in individual stanzas a wonderful mastery of technique. Note, for example, the following:

אל תגידו	בגת
אל תבשרו	בחוות אשקלון
פן תשמחנה	בנות פלשתים
פן תעלונה	בנות הערלים.

It is incredible that a poet who could produce such a beautifully-balanced stanza, would fail to apply his artistic powers to the production of balance and harmony between

the various parts of his composition. And, in fact, if we examine the poem a little more closely, we shall find that its structure was originally based upon a certain definite plan, which has only become obscured through the unfortunate corruptions of the text, and the disarrangement of its parts. The opening lines :

על במותיך חלל
איך נפלו גבורים,

are repeated in a different order in ver. 25, and also partly in the last verse (ver. 27). This fact justifies us in the assumption that the lines formed originally a *refrain*, which had to be repeated by a chorus after a certain break in the poem. Again, since in vv. 25, 27 the distich begins with

איך נפלו גבורים,

it is plausible to argue that this line formed the beginning of the refrain. Such a beginning would be parallel to the opening of Lam. 1. 1; 2. 1; 4. 1; to the opening of the *mashal* on the King of Babylon, Isa. 14. 4, and to the lament of Jer. 9. 18. The present arrangement of the lines in ver. 19 may be explained as being due to a mistaken popular exegesis, which regarded **הצבי** as the subject of **חלל**. Further, whilst the first line of the refrain is invariable (= **איך נפלו גבורים**), the second line varies: in the opening of the elegy it runs: **על במותיך חלל**; in the conclusion it runs: **ויאבדו כלי מלחמה**, but in the middle of the elegy we have the following lines side by side: **בתוך המלחמה** || **על במותיך חלל**. I venture to throw out the rather bold conjecture that **בתוך המלחמה** is a corruption of an original **מלחמה**. That warriors should fall in the midst of the battle is certainly a cause for lamentation, but, on the other hand, it is a fate that must inevitably befall many of them. The

thought, therefore, is rather commonplace. Not so, however, the thought that with the fall of the warriors have also perished the instruments of war. The distich

איך נפלו גבורים
בתוך המלחמה,

sounds inexpressibly weak beside

איך נפלו גבורים
ויאברו כלי מלחמה.

Seeing, therefore, that the line על במותיך חלל is found in the poem twice, we expect that its parallel line, ויאברו כלי מלחמה, should also be repeated again. And the only place where it can be found a second time is in ver. 25, and in the stead of the prosaic line בתוך המלחמה. Ver. 25 will thus be made up of two refrains, transposed from their right places, abridged, and jumbled together. Originally the contents of the verse ran as follows :

איך נפלו גבורים
ויאברו כלי מלחמה ;

and

איך נפלו גבורים
על במותיך חלל.

יהונתן has thus no room in the verse, and must be deleted, as a dittography from the following ver. 26.

The poem will thus have four refrains : one at the opening, one at the conclusion, and two in the middle. Each of these latter two must have stood at the end of a certain division in the poem. It follows that the poem must have originally been divided into three parts, and we may assume that these parts were of equal length. As the poem consists of nine verses, and as three of these are made up of refrains (vv. 19, 25, 27), we have six verses for the

three parts, viz. two verses for each part. And, in fact, if we scrutinize the contents of these three couples of verses, viz. 20-1, 22-3, 24-6, we shall find that the thoughts expressed in the verses of each couple are closely related to one another, and that the first couple leads up to the second, and the second to the third, thus forming a gradation of ideas, leading up to a climax in ver. 26, which is an outburst of personal grief over the loss of a friend, whose love transcended all the highest love known to human experience. In the first couple of verses the poet dwells on the catastrophe, in the second couple on the bravery of the dead heroes, and in the third and last couple, on their nobility of character, and their generosity to their friends.

The elegy opens with the refrain, ver. 19, which sums up forcibly and succinctly the tragedy enacted on the heights of Gilboa. This leads the poet directly to think of the malicious joy of the heathen enemy at Israel's calamity (ver. 20). Then his mind reverts to the tragedy, and he breaks forth with a curse on Mount Gilboa, on the heights of which the shield of the heroes had been flung away as something useless and unclean (ver. 21). Upon this followed the refrain in a modified form:

אֵיךְ נָפְלוּ גִבּוֹרִים
וַיֵּאבְדוּ כְּלֵי מִלְחָמָה.

The thought of the heroes in the second part of ver. 21, and their comparison in the refrain to the armour of Israel, leads the poet in the second pair of verses to a contemplation of their martial skill and their prowess in the battle-field, and of their affection and loyalty (vv. 22-3). The sequence of ideas would be greatly improved if we would change the order of these verses: first ver. 23, in which

the poet thinks of the heroes jointly and inseparably, and dwells upon the loveliness of their character, their mutual devotion, and their noble valour; and then ver. 22, in which the poet depicts the skill and the success in battle of each of the heroes separately. This part is also concluded by the refrain, namely in its first form:

איך נפלו גבורים
על במותיך חלל.

The mention at the end of the refrain of the heights of Israel, leads the poet in the third and last pair of verses to think of the heroes in their relation to their own people, and first he speaks of Saul and his generosity to the daughters of Israel (ver. 24), and then he bursts forth in a cry of grief over the death of his beloved Jonathan, and the loss of that wonderful love which had bound them together. And finally, the elegy is concluded by the repetition of the second refrain (ver. 27).

The poem thus consists, besides the four refrains, of three strophes, each of which contains two verses. In the first strophe the verses are tetrastichs, in which line *a* is synonymous to line *b*, and line *c* to line *d*, and *c-d* being synthetic to *a-b*. In the last two strophes the verses are tristichs, and the parallelism varies. Thus, in the first verse of the second strophe (ver. 23), the parallelism is synthetic. In the second verse of the second strophe (ver. 22), *b* and *c* are synonymous to each other, and synthetic to *a*. On the other hand, in the third strophe, the parallelism is the so-called *climactic* parallelism (or 'the ascending rhythm'). The unsuitable ערנים in ver. 24 *b* should be read, with LXX, ערי זהב, and this noun is taken up again in line *c*—ערי זהב. Further, I conjecture that the strange form נפלאה in ver. 26

consists really of a fusion of two words: נפלאה and נפלאה־ת. The lines will therefore run as follows:

נעמת לי מאד נפלאה
נפלאה אהבתך־לי מאהבת נשים.

As for the character of the lines, it may be stated that they contain mostly four stresses, or accents, with a *caesura* in the middle of the line. The only exception in the poem itself is the first line of the verses in the first strophe: אל תגידו בנת, which is trimetric only. The refrains are also made up of trimetric lines without any noticeable *caesura*. There is further the opening phrase, הצבי ישראל, which forms a perfect puzzle. If I could bring myself to acquiesce in the present order of the lines in ver. 19, I would propose to read: הַצֵּבָא יִשְׂרָאֵל, and to translate: 'The host, O Israel, lieth slain on thy heights! How are the mighty fallen!' But this hypothesis is rendered untenable in view of the results reached above. I can only conclude that these words contain an instruction to the people to join as a chorus in the singing of the refrain, but I am unable to suggest any suitable emendation. Perhaps הַשִּׁבִּי יִשְׂרָאֵל = 'Reply, O Israel!' As for the introduction in ver. 18, I conjecture that ללמד בני יהודה קשת is a later musical superscription to the elegy, on the analogy of similar superscriptions in the Psalms: cf. in particular Ps. 60. 1. The meaning would be that the elegy was sung to the tune of a song which began with the words בני יהודה קשת.

I will now set out the whole text of the poem arranged in accordance with the results of our investigation:

הצבי (?) ישראל
איך נפלו גברים
על במותיך חלל.

I

- | | | |
|---------------|----|------------------------|
| אל תנידו | 1. | בגת |
| אל תבשרו | | בחוצת אישקלן |
| פן תשמחנה | | בנות פלשתים |
| פן תעלונה | | בנות הערלים. |
| הרי בגלבע | 2. | אל-טל |
| ואל-מטר עליכם | | שדות המות ¹ |
| כירשם ננעל | | מנן נבורים |
| מנן שאול | | בלי-משיח בשמן. |
- אין נפלו גברים
ויאבדו כלי מלחמה.

II

- | | | |
|---------------|----|------------------|
| שאול ויהונתן | 1. | הנאהבים והנעימים |
| בחייהם ובמותם | | לא נפרדו |
| מונשרים קלו | | מאריות גברו. |
| מרם חללים | 2. | מהלב גברים |
| קשת יהונתן | | לא-נשוג אחור |
| וחרב שאול | | לא-תשוב ריקס. |
- אין נפלו גברים
על במותיך חלל.

III

- | | | |
|----------------|----|---------------|
| בנות ישראל | 1. | אל-שאול בכינה |
| המלבשכם שני | | עם עדיים |
| המעלה ערי זהב | | על לבושכן. |
| צר-לי עליך | 2. | אחי יהונתן |
| נעמת לי | | מאד נפלאות |
| נפלאה אהבתך-לי | | מאהבת נשים. |
- אין נפלו גברים
ויאבדו כלי מלחמה.

¹ With H. P. Smith and Budde after LXX, Lucian. This forms an excellent parallel to להרי בגלבע.

2. THE HYMN OF TRIUMPH

Most critics deny the genuineness of this magnificent hymn. They point to passages like vv. 23, 28, 50, which sound impossible in the mouth of David. But these obviously late passages may be glosses inserted by later scribes. It must be borne in mind that the poem was used for liturgical purposes at a rather early date, as is proved by its inclusion in the first Book of the Psalms, where it is headed לַמְנִצֵּחַ. It is therefore probable that additions were from time to time inserted into the poem by these מְנַצִּיחִים, or others, in order to bring it into greater conformity with the needs of their age. The problem is stated with admirable precision by the late Professor Briggs in his commentary on the Psalms (vol. I. p. 140 f.), to which the reader may be referred. The present writer feels positive that the late passages in the poem, to be enumerated below, are late insertions, and somewhat out of accord with the spirit of the original parts of the poem. By removing these insertions, we obtain a composition which bears the marks of a strongly individualistic character, a fact which militates against the theory advanced by many writers that the poet speaks for the community. The poet, who only speaks of his own personal experience, must have been in some great danger from which he had been saved miraculously by, what he considered, the direct personal intervention of God (vv. 5–20). Further, he was a warrior who had fought hard battles against foreign foes, and who had also met with opposition, or persecution, at the hand of enemies among his own people (cf. vv. 44 *a*, 49 *b, c*). By vanquishing both of these classes of adversaries, he secured for himself a wide and undisputed dominion over his own and other nations

(vv. 33-46). These details suit David better than any other personality known to us in the history of Israel. It is true that we have no record in our Books of Samuel of an event similar to the one described in vv. 8-17. But we must remember that our records of David's military history are extremely scanty and fragmentary. And it is plausible to assume, that he may have been indebted for one of his many military triumphs to a sudden thunderstorm, accompanied by torrential and tempestuous gusts of rain, which are depicted in our poem as a magnificent and awe-inspiring theophany. Perhaps his victory over the Philistines described in 2 Sam. 5. 19-21 was gained under similar circumstances, and we should read there ver. 20: *לִפְרֹץ* for *לִפְרֹץ*: 'The Lord hath broken down mine enemies before me *by means of* a breaking forth of waters.' Or, again, the whole picture may be a work of pure imagination to describe a miraculous deliverance from some overwhelming danger, and as such, too, it may suit David as well as any other historical person known to us. At all events, there is nothing in the poem, when reduced to its original form, to refute the theory of the Davidic authorship, and there is a good deal in the poem to support it. Seeing, further, that this theory, so plausible in itself, is also attested to by the superscription to the poem found in the two different recensions preserved to us in 2 Sam. and Psalms respectively, recensions which seem to have been derived from two different sources, we are fully justified in concluding that the author of the poem in its original form was no other but the Royal Singer of Israel himself.

We will now proceed to discuss the insertions and glosses in the poem.

The first line (ver. 2) has been recognized by all critics

as too long for the metre of the poem. And it has been proposed to omit the Divine name יהוה, thereby obtaining a trimetric line (so Briggs and others). But the retention of the name is absolutely necessary, since it forms the invocation at the head of the poem, and is parallel to אלהי in the next line, which latter should, of course, be pointed אלהי, with most of the Versions and Psalms (= אלי). It is, therefore, better to omit לי ומפלטי, a phrase which is also difficult grammatically. If so, the gloss will be very old, since it has been copied from here into Ps. 144. 2. In ver. 3 we must omit as a gloss the last four words ומונסי וגו', which are not found in Psalms. We must then read דְמוֹנֵי. The *waru* may have been omitted accidentally through haplography, owing to the preceding *yod*, or omitted deliberately by the glossator, in order to produce a better balance with the added ומונסי וגו'. By these changes we obtain an exordium to the poem, consisting of two trimetric verses, the first being a tristich, like the concluding verse of the poem (ver. 51), and forming a kind of invocation to the subject of the Hymn; and the second verse being a distich, like the great majority of the verses of the poem, and summing up succinctly the contents of the Hymn, viz. that by calling upon the Lord the poet secured salvation from his enemies:

ומצדתי	יהוה כלעי
אחסהביו	אלהי צורי
ומשגבי.	מונסי וקרנישעי
אקרא יהוה	מהלל
אושע.	ומן איבי

The next important insertion is found at the end of the first part of the poem, and consists of a series of three

glosses (vv. 21-8). The first of these glosses is made up of five trimetric distichs, vv. 21-5. The glossator puts into the poet's mouth the statement, that his deliverance was the due reward of his piety and righteousness. The object of the insertion is clear, viz. to confirm by David's example the community's belief in the doctrine of Divine retribution. It is hardly necessary to state that David would not have described himself, even in his poetic exaltation, as perfectly righteous and without blemish. He could not, for example, have entirely forgotten his sin with Bath Sheba. Contrast also the complacent self-righteousness in these verses, with David's more becoming humility in 2 Sam. 7. 18. On the other hand, the description of David's moral and religious perfection is quite in accord with the later idealized conception of the heroic king: cf. 1 Kings 11. 33; 15. 5, &c. This gloss was then followed by another gloss, in which the lesson to be derived from the first gloss was expressed in the fashion of the gnomic poetry (vv. 26-7). This second gloss consists of a trimetric tetrastich, in which the first three lines are synonymous with one another, and antithetical to the fourth line. The gloss teaches the doctrine of *מדה כנגד מדה*—Measure for measure. The person addressed in the verbs may be God; more probably it is the disciple of the sage. Our text has suffered in transmission: *נבור* in ver. 26 must be omitted, with Briggs, as a dittography of *נבר* in ver. 27, whilst the verbs in this latter verse must be corrected after the text in Psalms:

תתחסד	עם חסיד
תתמים.	עם תמים
תתברר	עם נבר
תתפלת.	ועם עקש

The second gloss was further followed by a third gloss, consisting of a trimetric distich (ver. 28), in which the glossator expressed the hope that God Himself would act in accordance with the rule taught in the preceding glosses, and save suffering Israel, and humble the proud evil-doers. The text of the second line is difficult. No doubt, as has been recognized by Briggs, it is more original than the smooth substitute in Psalms, but it is doubtful whether this is what the original glossator wrote. Briggs thinks that the original did not have the verb. But the expression על עין is elsewhere used only in a favourable sense, Gen. 44. 21; Ps. 32. 8. As the text stands, it must be interpreted with *Kimhi* and *Gersonides*, 'Thine eyes are upon the lofty that thou mayest humble them'.

vv. 31-2 are also glosses, but independent ones. They break the connexion between vv. 30 and 33, as will be made clearer later on, and they breathe a spirit entirely different from that of the verses immediately preceding and following them. Ver. 31a seems to have been suggested to some reader by תמים דרכו . . . האל (Ketib) in ver. 33. The line seems to have been modelled on Deut. 32. 4 (האל תמים בעליו), and is certainly not original. Perhaps it is only a dittography of the words in ver. 33. The following two lines are also found with slight variations in Prov. 30. 5, where the apothegm seems to have been preserved in a more original form. These lines seem to have been suggested by מן in ver. 36. Ver. 32 is a gloss on vv. 47-8a. Note and compare the Divine Names אל, יהוה, צור, אלהי in this verse with יהוה, צורי, אלהי, האל in vv. 47-48. The contents of the gloss are borrowed and adapted from a number of familiar passages in the Bible. Another gloss we have in ver. 36, as Briggs has rightly observed. The second line is ex-

tremely doubtful, and shows an Aramaizing tendency. In Psalms it has been further expanded by the addition of another gloss. It also breaks the connexion between ver. 35b and ver. 37, which describe the progress of the actual fighting by the poet, whereas ver. 36 is concerned only with the preparation for the battle, which has already been described in the preceding strophe (vv. 29-30, 33-4; cf. below). The last important gloss is to be found in ver. 50. Its lines are balanced unevenly, and its contents, while quite unsuitable in the mouth of David, belong to the stock of the familiar ideas and expressions of the later liturgical literature.

The critics consider also vv. 45a-6 either as a gloss or as evidence of the late date of the poem. They state that **בני נצר** is a late expression, and could not have been used by David. But there is no conclusive evidence to justify such a statement. Again, that the passage is conceived 'in the hostile spirit to foreign nations of later times' (Briggs). From this one might conclude that in early times Jews, unlike other nations, did not hate their enemies. We understand the motives which actuate Christian theologians in their glorification of the earlier Jews at the expense of their later descendants. But critics who claim to be scientific should not indulge in the *odium theologicum*. There are no real grounds for assigning a late date to the passage. Ver. 45a is parallel to Deut. 33. 29, certainly an old passage. In ver. 46b we should restore **וירגו**, as in Micah 7. 17, which is derived from our passage. **ויהרגו**=**ויהרגו**, as in Psalms, was substituted by a scribe, who thought the Aramaic word more elegant, a procedure which has been responsible for the occurrence of many Aramaisms in our ancient texts. Finally, the last verse of the poem, ver. 51, is also considered

by most critics as being of late date. But it is not clear why David should not have described himself as God's King and God's Anointed, a title which he repeatedly applied to Saul. The impersonal note in the verse is, indeed, not found elsewhere in the poem, but it should occasion no surprise. It is intended to give the poem a more solemn and elevated ending, and at the same time to indicate its authorship. Note the climactic gradation
 דוד || משיחו || מלכו.

Having cleared the poem of its later accretions, we are now in a position to determine its structure, and to study its contents.

The original Hymn is divided into three parts: (1) an exordium (vv. 2-4); (2) the poet's deliverance from a deadly peril through the personal intervention of God (vv. 5-20); (3) his victory over the enemy in battle, the submission of all his adversaries, and his attainment to dominion for himself and his seed (vv. 29-30, 33-5, 37-46, 48-9, 51). The connexion between the latter two parts is rather loose, but it would be hypercritical to suspect a duality of authorship. Perhaps, however, these two parts formed originally two distinct compositions.

The prevailing metre is the distich with three stresses to the line, and with a *caesura* after the first or second stress. But there are some variations to this rule. The opening verse (vv. 2-3 b) and the concluding verse (ver. 51) are both tristichs. A tristich is also found twice in the middle of the poem, in a passage of sweeping passion and eloquence, which depicts the terrible manifestations of the Divine wrath (vv. 8-9). Again, instead of the trimetric line, we also find lines with two stresses only, viz. vv. 7 d, 13 a, 16 a. It is to be noted that these dimetric lines are

found, as will be shown below, only in the last distich of the strophe. A dimetric line appears further in ver. 46 b, also the last distich of a strophe; but the long word *מַטְסַנְרוּתָם*, which should, perhaps, be changed, with Psalms and Micah 7. 17, into the fuller form *מַטְסַנְרוּתֵיהֶם*, seems to be equivalent to two stresses (*מַטְסַנְרוּתֵיהֶם*). The same applies to ver. 41 b (*וְאֵלֵצִיחֶם*), and to ver. 24 b in the gloss (*וְאֵלֵשְׁתַּמְלָה*). On the other hand, in ver. 15 b we must read with some texts of the LXX: *וַיְבָרֶךְ בָּרֶק וַיהוָה*; cf. Ps. 144. 6, which is an adaptation from our passage. In ver. 4 b (the end of a strophe!) we should, perhaps, read, as in Psalms, *וּמִן אֵיבֵי*. So also in ver. 49: *וּמִן קָמִי, מִן אֵיבֵי*; cf. Psalms. In a number of lines our text shows more than three stresses (e.g. ver. 12, 35 b, 43 b), but these rest on textual corruption, as will be shown below.

(1) The exordium consists, as has already been observed, of one strophe of two verses; a tristich of synonymous lines, forming a kind of invocation, and a description of the subject of the Hymn (vv. 2-3 b), and a distich of synthetic lines, summarizing the contents of the Hymn (ver. 4). The other two parts of the poem are of practically equal length, each part consisting of five strophes, and each strophe being made up of four distichs, or eight lines. An exception to this rule is found in the second strophe of part two (vv. 8-9), which consists of two tristichs, or six lines.

(2) Part two describes the poet's deliverance from his peril through a theophany. Strophe 1 (vv. 5-7). The poet is encompassed by deadly perils, and he cries to God, who hears his voice. The strophe consists of four distichs, the lines of which are synonymous. There is also a synonymity between the first and the second distich, and between the third and the fourth, while the second pair of distichs is

synthetic to the first pair. The introductory **כי** in ver. 5 should, with Psalms, be omitted as a scribal addition. For **אָקרא**, in ver. 7 b, we should read **אִשְׁעוּ**, as in Psalms and some Versions. Strophe 2 (vv. 8–9). God's mighty wrath is kindled against the poet's enemies, and it manifests itself in the terrible agitation of the heavens and the earth, and in the smoke and fire and burning coals, which issue forth from the Divine breathing. The strophe consists of two tristichs, in which the first two lines are synonymous, and the third line is repetitionary. Strophe 3 (vv. 10–13), God appears in person to deliver the poet. The strophe consists of four distichs. In the first two (vv. 10–11) the lines are synonymous; in the third distich (ver. 12, see below) they are climactic, and in the fourth (ver. 13) synthetic. For **וִירָא** in ver. 11 b we should, of course, read **וִירָא**, as in Psalms and many manuscripts. In ver. 12 I propose to delete **כְּכֹת** as a dittography of the similar letters in the previous word; also to delete **כִּים** which is altogether out of place here, and to correct, after Psalms and LXX, **חֲשֵׁכָה** for **חֲשֵׁרָה**. The distich will then run as follows:

כְּכֹתוֹ	וְיִשֶׁת הַשֶּׁךְ
עֲבִי שְׁחָקִים.	חֲשֵׁכָה

The parallelism will thus be climactic, or of the ascending rhythm. In ver. 13 our text is certainly correct and original. The meaning is that in spite of the thick darkness with which God surrounded Himself in the last verse, yet the Divine brightness that is always before Him (**נִגְדּוֹ**) shone and glowed like burning coals of fire. The text in Psalms manifestly arose through a corruption of our text. **בְּעָרוֹ** was changed by the transposition of the first two letters into **עָבְרוֹ**, and this erroneous form was dittographed twice

into עביו and ברר. Strophe 4 (vv. 14-16). God hurls His weapons of thunder and lightning, and scatters the poet's enemies amidst the tempest and the flood. The strophe consists of four distichs of synonymous lines. In ver. 14 we should read וירעם, as in Psalms, since the verb describes a single act, corresponding to the preceding and following verbs. So also in ver. 16 ב, ויגלו, as in Psalms. In ver. 15 ב we must read ויברק ברק; cf. our remark above. Finally, strophe 5 (vv. 17-20) describes the poet's deliverance following on the overthrow of his enemies, and consists, like the previous strophes, of four distichs of synonymous lines. עז מאיבי in ver. 18 a is grammatically difficult. It is better to insert כי before עז, parallel to כי אמצו, in the second line. In ver. 19 we should point יקרמני, the subject being the Lord: cf. Ps. 21. 4; 59. 11, &c. This will greatly improve the parallelism. The object אחי in ver. 20 is placed at the end of the line for the sake of emphasis. In Psalms we get the contracted form ויוציאני, through the influence of יקרמני, יחלצני, &c.

(3) The third part begins with ver. 29, after the first series of glosses discussed above. It describes the poet's military victories, and his rise to dominion over his enemies from within and without. It consists, like the second part, of five strophes of four distichs each, with the exception of the concluding verse, which is a tristich. Strophe 1 consists of vv. 29-30, 33-4, the intervening verses, as already stated, being late glosses. The strophe describes the poet's preparation and equipment for the battle against his enemies. God illumines the darkness of his path (ver. 29); He gave him strength to run at the troop of the enemy, leaping the walls that blocked his way (v. 30); He girded him with strength, and rendered his way even and free

from obstacles (ver. 33), and, finally, made him as fleet as a hind, and stationed him in the battle-field on elevated ground, and in a commanding position (ver. 34). The parallelism in the first two distichs is synonymous, and in the last two synthetic. In ver. 29 our text is original. The text in Psalms is evidently a free paraphrase for the rather materialistic description of God as a lamp. ויהיה in b should be ואלהי, as in many manuscripts, cf. Psalms. Ver. 33 must be restored with Psalms:

האל	המאורני חיל
ויתן	תמים דרכי.

In ver. 34 b it would be better to read with LXX במות, namely, of the battle-field; but במותי may also be defended. Strophe 2 (vv. 35, 37-9) describes the battle. With the skill which God had taught his hands, the poet bends his bow to shoot at the enemy from a distance (ver. 35); at the approach of the enemy to fight at close quarters, God broadens the space between the poet's feet that he may stand firm at the onset of the enemy (ver. 37); the enemy retire discomfited, and the poet pursues them with destruction (ver. 38); he smites them, that they fall under his feet (ver. 39). The parallelism is synthetic. In ver. 35 b, I read: ונחתה קשת זרעתי. נחושה is either a dittography of נחתה, or a gloss from Job 20. 24; cf. also Nowack, *ad loc.* נחתה is piel of נחח = ירר, as in Aramaic, and is applied to pressing down one part of the bow by the hands, whilst the other part is stretched by the feet (Ps. 7. 13. This disposes of Briggs's objection). So Rashi and others; cf. Thenius-Löhr, *ad loc.* ואשמירם in ver. 38 a is premature. We should better read with Psalms ואשיגם; cf. Exod. 15. 9, ארדף אשיג. In ver. 39 a we must omit ואכלם, with Psalms. It is a gloss

suggested by בלֹותם. We should also read, as in Psalms, אֶמְחָצֵם, יִפְּלוּ, the verbs being progressive imperfects, describing the gradual progress of the battle. Strophe 3 (vv. 40-3) gives a second description of the battle, with additional details. In the first two distichs the lines are synthetic, and in the last two distichs they are synonymous. וְתוֹרִי in ver. 40 should, of course, be corrected, as in Psalms, into וְתֹאזְרֵי; so תַּתֵּה, ver. 41, into נִתְּתֵה. Our text in ver. 41 b is certainly much more effective than Psalms. מִיִּשְׁנָאִי is, of course, a case of *casus pendens*, and וְאַצְמִיתֵם should be pointed וְאַצְמִיתֵם. For יִשְׁעוּ in ver. 42 we must read יִשְׁעוּ, as in Psalms. In ver. 43 we must point וְאַיִשְׁחָקֵם, and delete אֶרְקֵם, which is a correction of an erroneous *varia lectio* אֶרְקֵם, as in Psalms. Strophe 4 consists of vv. 44-6, *plus* 49 c which must be inserted after ver. 44 a (so also Nowack). The strophe describes the poet's triumph over his internal enemies (vv. 44 a, 49 c), and his dominion over foreign nations (vv. 44 b-6). The parallelism may be described both as synonymous or synthetic. In ver. 44 a we must, with Psalms, omit the *waaw* consecutive, corresponding to the other imperfects in the strophe. עָמִי is certainly correct, the reading in Psalms having arisen from the old defective spelling. The allusion must be to the revolt of Absalom, Shim'i, and Sheba'. אִישׁ חֲמָסִים may refer to any of his numerous Israelitish foes; cf. Ps. 55. 10. Perhaps Ibn Ezra (Ps. *ad loc.*) is right in seeing in it a reference to Saul; cf. 1 Sam. 24. 14. תִּשְׁמְרֵי in ver. 44 b should, of course, be corrected, with Psalms, into תִּשְׁמְרֵי. In ver. 45 the order of the lines in our text is certainly to be preferred to that in Psalms. For לִשְׁמוֹעַ, however, it is better to read, as in Psalms, לִשְׁמָע. In ver. 46 יִבְּלוּ should be retained, and in ב we should read, as already observed above, וִירְגוּ מִמִּסְגְּרוֹתֵיהֶם.

It may be noted that the poet devotes three distichs to a description of his absolute dominion over his foreign subjects, because of its great political and religious significance, and its novelty in the history of Israel. The last and concluding strophe (vv. 47-9 b, 51) contains a doxology to the God who had vanquished the poet's foes, and had magnified His salvation and mercies to His Anointed King David and his dynasty; cf. 2 Sam. 7. 16, 29. The strophe consists of three synonymous distichs, and a tristich of which the first two lines are synonymous, and the third and concluding line, climactic. A tristich describing the relation of God to the Royal poet, forms thus the conclusion of the Hymn, just as a similar tristich formed its beginning. In ver. 47 b **צור** must be omitted with Psalms. In ver. 48 b **ומירד** is original; cf. Briggs. In ver. 49 we should read, as stated above, **ומן איבי ומוציאי**. **ומן קמי**, **מן איבי**, forms a better parallel to **מפלטי** of Psalms. The sense may be: 'Who bringeth me forth and freeth me from the power of mine enemies', the allusion being to his liberation from the power of Saul, and from his vassalage to the Philistines.

I append the full text of the Hymn, arranged and corrected in accordance with the conclusions of our foregoing inquiry.

I

סלעי ומצדתי [ומפלטי לי]	יהוה
צורי אחסדדבו	אלהי
וקרן ישיעי ומישגבי [ומנוסי מושעי מחמס תישעני].	מנני
אקרא יהוה	מחלל
אישע.	ומן איבי

II

- | | | |
|----|-------------------------|-------------------------|
| 1. | אפפני | מִי־עֲבָרִי מוֹת |
| | נחלי בלִיעֵל | יִבְעֵתֶנִּי. |
| | חבלי יֵאוּל | סִבְנִי |
| | קִדְמוֹנִי | מִקִּשֵׁי מוֹת. |
| | בִּצְרָלִי אֶקְרָא | יְהוֹה |
| | וְאֵל אֱלֹהֵי | אִשׁוּעַ. |
| | וַיִּשְׁמַע מִהִיכְלוֹ | קוֹלִי |
| | וַיִּשְׁוֹעֵתִי | בְּאִזְנוֹי. |
| 2. | וַתִּנְעֹשׂ וַתִּרְעֹשׂ | הָאָרֶץ |
| | מִוֹסְדוֹת הַשָּׁמַיִם | יִרְגֹּזוּ |
| | וַיִּתְנַעֲשׂוּ | כִּי חֲרָה־לּוֹ. |
| | עֲלֶה עֵשֶׂן | בְּאִפּוֹ |
| | וְאֵשׁ | כִּיפִיו תֹּאכַל |
| | נַחֲלִים | בַּעֲרוֹ מִמֶּנּוּ. |
| 3. | וַיֵּט שָׁמַיִם | וַיִּרְדּוּ |
| | וַעֲרַפֵּל | תַּחַת רִגְלָיו. |
| | וַיִּרְכַּב עַל־כְּרוֹב | וַיַּעֲף |
| | וַיִּדְא | עַל־כַּנְּפֵי רוּחַ. |
| | וַיֵּשֶׁת חֶשֶׁךְ | סָבִיבָתִּי [סִכּוֹת] |
| | חִשְׁכַּת | עֲבִי שַׁחֲקִים. [מִים] |
| | מִנְּגָה | נִגְדּוּ |
| | בַּעֲרוֹ | נַחֲלֵי אֵשׁ. |
| 4. | וַיִּרְעַם מִן־שָׁמַיִם | יְהוֹה |
| | וַיִּגְלִיזוּן | יִתֵּן קוֹלוֹ. |
| | וַיִּשְׁלַח חֲצִיצִים | וַיִּפְצֹצֵם |
| | וַיִּבְרַק בָּרָק | וַיַּהֲמֵם. |

אפקי ים	ויראו	
מוסדות תבל.	ויגלו	
יהוה	בנערת	
רוח אפן.	מנשמת	
יקחני	ישלח ממרום	5.
ממים רבים.	ימשני	
כיעז	יצילני מאיבי	
כיראמצו ממני	משנאי	
ביום אירי	יקרנני	
משענ-לי.	ויהי יהוה	
למרחב אתי	ויצא	
כיחפין בי.	יחלצני	
בצדקתי	[יגמלני יהוה	I.
ישיב-לי.	כבר ירי	
דרכי יהוה	כישמרתני	
מאלהי.	ולא רשעתי	
לנגדי	כיכל משפטו	
לא-אסור ממנה.	וחקתו	
תמים לו	ואהיה	
מעוני.	ואשתמרה	
בצדקתי	וישב יהוה-לי	
לנגד עיניו].	כברי	
תתחסד	[עם חסיד	2.
תתמכ.	עם תמים	
תתכרר	עם נבר	
תתפתל].	ועם עקש	
תושע	[ואת-עם עני	3.
על-רמים תשפיל].	ועיניך	

III

יהוה	כִּי־אתה נרי	1.
יגיה חשבי,	ואלהי	
ארון גדוד	כִּי־בכה	
אדלג שור,	באלהי	
[האל תמים דרכו]	האל	
תמים דרכי,	ויתן	
כאילות	מישה רגלי	
יעמידני,	ועל במות	
[ותתן־לי מנן ישעך	מלמד ידי	2.
וענותך תרבני],	ונחתה קשת	
[אמרת יהוה צדופה	תרחיב	
לכל ההסס־בנו],	ולא מעדו	
קרסלי,	ארדפה איבי	
ואשיגם	ולא אשוב	
עד־כלותם,	אמהצם	
[ואכלם ו־]	יפלו	
ולא יקומון	ותאזרני חיל	3.
תחת רגלי,	תבריע קמי	
למלחמה	ואיבי	
תחתני,	משנאי	
נתתה־לי ערף	ישועו	
ואצמיחם,	אל־יהוה	
ואין משיע	וא־שחקם	
ולא ענם,	כטיט חוצות	
כעפר ארין	אדקם [ארקעם],	

מריבי עמי	תפלטני	4.
תצילני.	מאיש חמסים	
לראש גוים	תשימני	
יעברני.	עם לא־ידעתי	
יתכח־שרלי	בני נכר	
ישמעורלי.	לשמע און	
יבלו	בני נכר	
ממסנרותיהם.	וירגזו	
וברוך צורי	ח־יהוה	5.
אלהי ישעי [צור]	וירם	
וכי־צור	זולתי אלהינו].	
נקמת־לי	האל הנתן	
תחתני.	ומריד עמים	
מן איבי	ומציאי	
תרוממני.	ומן קמי	
[על־כן אורך יהוה בגוים		
ולשמך אומר].	מגדיל ישועות	
מלכו	ועשה חסד	
למשיחו	לדוד ולורעו	
עד־עולם.		

3. THE ORACLE OF DAVID

The critics have almost unanimously declared against the genuineness of this poem. David, they maintain, could not possibly have described himself as נעים ומרות יִשְׂרָאֵל. For this would imply either that David was already in his lifetime famous as a hymn writer, following the interpretation of Rashi and other Jewish commentators, or, following the less probable interpretation of the moderns, that already

in his lifetime he had become the favourite object of Israel's poems. Such a description, if genuine, would clash with the critical theory of the late date of the Psalms, and similar compositions preserved to us in the Bible. Secondly, David was not possessed with the gift of prophecy, as stated in vv. 2, 3. Thirdly, ver. 7 b contains the eschatological doctrine of the punishment of the wicked with fire, a doctrine which belongs, according to the critics, to the later stage of religious development. None of these arguments, however, will stand a moment's examination. The first two simply beg the question. And even if we accept the critical dogma that all the Psalmodic poetry preserved in the Bible is of exilic and post-exilic date, we are yet by no means compelled to believe that no Psalmodic poetry was written in David's time. For such poetry might have failed to secure preservation in the Biblical collection. But the critics themselves concede the genuineness of David's elegies on Saul and Jonathan, and on Abner. Why could not David have composed also religious poetry? He was endowed with a sensitive soul and with a rich imagination. He was also deeply religious, as is proved, to cite no other examples, by his speech to Zadok (2 Sam. 15. 25-6), and by his answer to Abishai (*ibid.* 16. 10-12). And his romantic and adventurous career offered rich material and plenty of opportunities for the composition of hymns of prayer in times of danger, and of praise in hours of escape. It would have been passing strange if David had not used his poetical and musical gifts in the service of his God. Again, why should not other poets have sung of David and his noble deeds, even in his own lifetime? Already at the beginning of his wonderful career, and in the ruder age of Saul's reign, he had become the inspiration of the popular poet and

musician of the time (1 Sam. 18. 7, &c.). It would have been very strange indeed, if no poet had been found in the greater and more prosperous age of his own reign to sing of the heroic king and his heroic achievements. Nor have we any right to deny David the gift of prophetic inspiration. The anointment had conferred such a gift upon Saul (1 Sam. 10. 6, &c.); why not also upon David? (Cf. 1 Sam. 16. 13, and note the comparison of David to an Angel of God, 2 Sam. 14. 17, 20; 19. 28.) The third argument rests upon a very doubtful interpretation of ver. 7, and need not be considered any further. Apart from these shaky arguments, and the subjective prepossessions of the critics, there is no evidence whatever to disprove the genuineness of the tradition of the Davidic authorship of our poem. Not a single Aramaism is to be found in it; nor any trace, however faint, of allusions to conditions or events later than the Davidic age. Furthermore, the Davidic authorship is not only asserted in the superscription, but it is actually made the subject of three verses out of the seven composing the poem. We must, therefore, regard its Davidic authorship as beyond doubt or question.

The poem consists of two parts: an Exordium (vv. 1-3), and the Oracle (vv. 4-7). The Exordium begins with a trimetric tetrastich, describing the poet (ver. 1), and then proceeds to describe the source of the oracle, viz. God's word communicated direct to the poet. In ver. 3 a we must read with the Old Latin Version *אלהי יעקב*, as in ver. 1. But the line as it stands is incomplete, for *אמר* requires a dative. I therefore propose to transfer *לִי* to the beginning of the line, and to insert *בִּי* before *דבר*. We may suppose it to have been omitted accidentally from the original text

through haplography : יַעֲקֹב (=בִּי) . The distich will then run as follows :

אֱלֹהֵי יַעֲקֹב	לִי אָמַר
צוּר יִשְׂרָאֵל,	בִּי דַבֵּר

The next distich has given great trouble to commentators. Our mediaeval exegetes connect it with the foregoing : cf. Rashi : אֱלֹהֵי דַבֵּר וְצוּר יִשְׂרָאֵל שֶׁאֵהִי מוֹשֵׁל . . . צִדִּיק , but the connexion is not apparent. Most moderns (cf. Driver's note *ad loc.*) connect it with what follows as subject to ver. 4, but this connexion is on grammatical grounds very precarious. I believe it is evident that the distich is parallel to ver. 1, and may, therefore, probably be a gloss on that verse. The original exordium will thus have consisted of two tetrastichs of synonymous lines, each line containing three stresses, with a *caesura* after the first or second stress.

The text of the second part, the Oracle, is extremely difficult. In the second half of ver. 4 we get the prepositional letter ׀ repeated three times in four words. So also the combination כִּי לֹא is repeated three times in vv. 5, 6. Note also the repetition of כִּי alone in ver. 5. All this cannot be original. Then again, ver. 4 lacks a predicate, and its second half (מִנֶּנָּה וְגו') lacks a verb. The latter circumstance has induced the moderns to turn מִנֶּנָּה into some verbal form, such as מְנִיחָה, מְנִיחָה, &c. (cf. Driver). But these emendations are excluded by the fact that נָּנָה is evidently parallel to אִיר בִּקֵּר in the first half of the verse. Again, כִּי לֹא כֵן in ver. 5 a is interpreted as an interrogative, or is emended into הֲלֹא. But we expect that the idea expressed in this line, which forms the chief burden of the Oracle, should be made the subject of a *categorical* statement, and not of a mere interrogative. I therefore propose to emend מִנֶּנָּה, and to transfer to it the *waru* from וּבְאִוָּר ;

further, to delete the $\bar{\text{ב}}$ from מארץ as a dittography from ממטר, and to read ירשיא = ירשא for דשא, cf. Gen. 1. 11, and Joel 2. 22; and finally, to delete כי לא at the beginning of ver. 5 as a dittography from the following, and to join the remaining words of ver. 5a to ver. 4 as its predicate. The lines will thus run as follows:

יורה שמש	כאור בקר
לא עבות	בקר
ירשא ארץ	וכננה ממטר
עמאל.	כן בתי

' As the light of morning	when the sun ariseth,
A morning	without clouds,
As the brightness after rain	which causeth the earth to
	spring forth with young
	grass,
So shall my house	be with God.'

We thus obtain a tetrastich similar to those in the Exordium, except that lines α and ϵ , which are parallel synonymously, contain four stresses, instead of three, as in the Exordium and in the rest of the poem. Line δ is climactic to α , and line ζ is synthetic to the three preceding lines. The tetrastich thus states positively the chief purpose of the Oracle, viz. the promise of the brightest prosperity to the dynasty of the inspired Royal singer.

The next line gives the cause of this prosperity: the poet's covenant with God, the document of which is set out in detail, and securely preserved. Then follows the reason why God granted the poet His covenant, viz. the poet's opposition to evil-doers. חפץ must be read, with all

moderns, חפצי=חפץ, and ובליעל must be joined to יצמיח, and read בליעל יצמיחו. The lines will thus run:

כי-בל ישיעי ובל-חפצי
כי-לא יצמיחו בליעל.

We thus obtain another trimetric tetrastich, similar to the preceding tetrastichs.

The following lines describe the character of the בליעל, who are compared to thorns which cannot be touched by the human hand, except with instruments of iron. I propose to read בקוין מנר = בִּי קוֹיִן = קוֹיִן for בקוין מנר. I propose to emended, with many moderns, into מרבר, but the whole of this passage is extremely doubtful. If genuine, it must be regarded as fragmentary; for it is not likely that the poem should have concluded here. בשבת has been rightly recognized by all moderns as a dittography of the corrupt ישב בשבת in ver. 8. But I conjecture that the whole of this very prosaic line is a gloss. vv. 6, 7 will thus form another tetrastich, similar in character to the preceding, except that the last line has four stresses, as ver. 4 a, c.

I now append the full text of the poem, arranged and emended according to the results of our investigation:

I

[מושל באדם צדיק	בן-ישי	1. נאם דוד
[ביראת אלהים.]	מושל	ונאם הנבר
	אלהי יעקב	משיח
	זמרות ישראל.	ונעים
	דבר-בי	2. רוח יהוה
	על לשוני.	ומלתו
	אלהי יעקב	לִי-אמר
	צור ישראל.	בירדבר

II

- | | | |
|--------------------|----------------|----|
| יורח שמש | באור בקר | 1. |
| לא עבות | בקר | |
| יִדְּשָׂא ארִין | ובנגה ממטר | |
| עם־אל. | כן ביתי | |
| שם־לי | כי־ברית עולם | 2. |
| ושמרה | ערוכה בכל | |
| וכל־חפצי | כי־כל ישעי | |
| בליעל. | כי־לא יצמיחו | |
| כלהם | ביקוין מנר (?) | 3. |
| יקחו. | כי־לא ביד | |
| בהם | ואיש ינע | |
| [ובאש שרוף ישרפו.] | ימלא ברזל | |
| ועין חנית. | | |



NOTES ON POST-TALMUDIC-ARAMAIC LEXICOGRAPHY

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THE lexicon of the Jewish-Babylonian-Aramaic dialect was by no means sealed with the completion of the Babylonian Talmud. The 'Aramaic' was alive and spoken by non-Jews as well as Jews down to the last days of the Gaonate (to be treated elsewhere). This Aramaic dialect—which I might style the Jewish 'Nabatean'—is preserved in the writings of the Geonim: in the *Seder Olam Zuta*, *Shimusha rabba* (שימושא רבא דתפלין), in the Gemara to *Kalla r.*, the *Sheeltot* of R. Aḥai,¹ *Halakot Pesukot* and *Halakot Gedolot*, in the Aramaic commentaries and responsa of the Geonim (to which belongs also R. Amram's *Seder*), and—on the non-rabbinic side—in Anan's writings. But the linguistic nature of that literature has hitherto been neglected to such an extent that it now becomes imperative to emphasize as strongly as possible the relation and exact nature of this 'Nabatean' dialect and—what is particularly important—its aid in the explanation of some talmudic words. As a contribution along these lines the present article offers disconnected lexical (sometimes also textual) notes to the above-mentioned works, my wish being to turn the attention of Semitic scholars to those important linguistic documents.

¹ See Poznański in *JQR.*, New Series, III, 405 ff.

I begin with Anan's writings because they are free from talmudic quotations and hence cannot have been directly influenced by the language of the Talmud.

I

LINGUISTIC REMARKS TO ANAN'S

*Sepher ha-Miṣwot.*²

Anan's language does not differ in the least from that of the Geonim; at the utmost he employs very few Persian words, which is not the case with the Geonim. An Arabism is probably מידם (= מ'א), no. 6 a, and perhaps also היי, no. 16.^{2a} The י in the part. pl. which is found in the Jewish-Palestinian (rarely, comp. Dalman, *Grammatik des jüüd.-pal. Aramäisch*, p. 229) and frequently in the bab. Talmud (Margolis, *Lehrbuch d. aram. Sprache d. Talm.*, pp. 40 f.)³ and likewise by the Geonim, I find in Anan only in the case of verbs tertiae י באעו, בעו, alongside with בעי, באשו (pp. 33-5), שארו (34), מסגו (56), מסאגו (66), ראמו (57), מישתעונו, מיטעונו, מיטעונו, מיטעונו, קרונו, &c., which is perhaps to be ascribed to the Arabic influence. The orthography is that of the gaonic writings (comp. my 'Rechtsgutachten, &c.' in *Fahrbuch d. jüüd. lit. Ges.*, IX, 230 ff.), in accordance with the Babylonian pronunciation, of which there are traces left

² Harkavy (= Hark.), *Stud. u. Mitt.*, VIII, St. Petersburg, 1903; Schechter (= Sch.), *Documents*, &c., II, קונטרסים מספר המצות לענן, Cambridge, 1910.

^{2a} Perhaps also קבליתא, Anan, Hark. 20, see Hark., *l.c.*, note 4.

³ Comp. Seidel in *התרבות הישראלית*, I, Jerusalem, 1913, p. 69.

⁴ Once Hark. 39: מצלנן, to which the editor remarks: עס: בנ' עס. הכולם מנקוד הבבלי (כמו מצלינן וכן למטה). Hark. probably changed here the Babylonian ḥolem (◌ֿ) to a Tiberian (◌ֿֿ); for ◌ֿֿ is ḥireḳ in the Babylonian punctuation!

in the Talmud (Nöldeke, *Mand. Grammatik*, p. 59) and which is used throughout in Mandaic and 'Nabatean'. *Matres lectionis* are employed instead of vowels (as in Mandaic), ה instead of ח (להורד, p. 28; להוריה, pp. 10 and 21; מאהר, see below), and so on. Furthermore, frequent elision of ר (אמא, ארכא; Gaonic also ספסא, קולא, even assimilation to the following ל: משגיל ליה, see no. 16 note); ב instead of ו (לם = נם); ל for נ (חבין = כבין); ח for כ (חווקי = האבוקי); comp. נהמא, Mand. להמא; ניגרא, Mand. ליגרא 'foot', &c.) and like changes.

1. Hark., p. 7, l. 8 f. b: מישר גראדי⁵ לציצת, furthermore p. 8, l. 9: מישר שירא ליה איתתא רב' וכל אשה חכמת לב: and שירא do not mean here, as Harkavy thinks, 'throw' (להטיל), 'pass a thread'—this would require in Aramaic מירמא, from the root רמא (Men. 39 a, 43 a *et al.*)⁶—but 'spin', יתבה קא שריא פילכא Ket. 72 b; שרי, שרא talmudic; Git. 69 a . . . חוטי רוהוריתא דשרתיה רומה . . . and Suk. 16 a וּמִשְׂרָא אִשְׁלִי. In gaonic literature: *Geonica*, p. 325, XLI: רעברן נשי למישר במרדני (مِرْدَن = spindle), and *ibid.* XLV: דמנצבתן נשים למישר. Arab. سَدَى, سَدَا II = *stamina telae disposuit*; سَدَا, سَدَى = *stamen*.⁷ The passage must therefore be translated into Hebrew as follows: לטוות חוטים, hence לטויה לשמה as Suk. 9 a, Men. 42 a (which Hark. had already pointed out on p. 126). Likewise on p. 8 the Hebrew rendering should be: אבל לטוות גם אשה יכולה לטוות⁸: אותן שנא' וכל אשה חכמת לב [בידיה טווי!]

⁵ The misprint גראדי is corrected on p. 196.

⁶ Also *Sheelot*, no. 96, end: ולמירמא ליה תיכלתא.

⁷ I believe, therefore, that Nöldeke (*Neue Beiträge*, p. 144, note 1) is wrong in assuming سَدَى to be a loan-word from the Aram.-Syr. שתיא, Hebrew שְׁתִּי.

⁸ This is permitted also by R. Meir of Rothenburg, *Hag. Maim.*, Şiṣit, I, 12.

Ananic verb is שור (שיר, מישר); the talmudic and Arabic on the other hand שרי, שרא, שרי (משר, שרינא שריא). Indeed, the verba tertiae ו and י and those mediae ו and י often interchange.—גראדי (p. 7), גרדי (p. 8) were rightly rendered חוטים by Harkavy. Syr. ܠܝܥܝܡ = *licium* (Payne Smith, 650); Nabatean גראד (גראד) from which Arab. جَدَاد is borrowed. Cf. Ġawālīkī, *Muarrab*, ed. Sachau, p. 42: *وَالْجَدَادُ الْحُيُوطُ الْمُعَقَّدَةُ وَهِيَ بِالنَّمِطَةِ كَدَادٌ*⁹. The word also occurs in the Talmud a number of times, but in a corrupt form: Men. 42 b הגרדין ומן הנימין ומן הגרדין (edit. הגרדין), so Amram Gaon, *Geonica*, 331—thrice!—with the explanation: מן הגרדין כנון אוריג שארג בגד של צמר אותו (אותן חוטין הלכות ס"ת שנותרו מן השתי לאחר שניחתך בגד¹⁰ לא מן נימין ולא מן דילמא מירבקא גראד: Shab. 134 a; (גרדיא edit. סיסיא ולא מן גרדיא והני מילי בנידין אבל בגרדין: Men. 31 b; (גרדיא MS. M., גראד edit. גרדיא, but so in the הלכות ס"ת בגרדין, edit. Adler, Oxford, 1897, 42, with the explanation: 'ופיר' גרדין כההיא דגרסינן במסכת סוכה עשאה מן הקוצין ומן הגרדין ומן הנימין פסולה ופיר' שירי המסכת שמשיר האורג מן הבגד כשהוא חותכו Bek. 8 b: לי גרדי (גרדי edit. כרובי לי גרדי¹¹); *licium*—as I have already remarked—but also: *stamina ultima quae a ingo abscinduntur*, BA. BB: חוטא דקאנא דמודקר דתלין (Payne Smith, 650).

2. p. 8: למיניד לה is not to be rendered with Harkavy אותה לקשור, but to be read, in accordance with facsimile no. 1, as one word למינידלה and

⁹ Fränkel, 256. In Mandaic כ for ג is not rare, comp. Nöldeke, *Mand. Gramm.*, p. 41.

¹⁰ Similarly Rashi, Suk. 9a: שתולין בסוף הטלית מותר: (franges) פרני"ש. הארינה.

¹¹ Probably also Targ. Job 7. 6: גרדית מהי: יומי קלילו מן גרדית should be read גרדית, Peshiṭta קין גרדי קין גרדית.

rendered by גרול (לקלוע) from גרל = twist, weave. As to the form comp. the infinitives מיעיבדיה (p. 7), למיתיעיה (p. 11), &c.; likewise in Mandaic; and in gaonic literature: מישירייה (*Geonica*, 107, 4), מישקליה (*ibid.*, 234, 13), &c.

3. *Ibid.*: על ג' מיכדים . . . חוטי זהב דשרשרת על ג': בְּרִימִין, read מִיבְרִים and בְּרִימִין 'twisted, woven'; Arab. بَرَّمَ = *contorsit funem*, بَرَّمَ = *ex duabus aut pluribus partibus in unum contortus, funis contortus bicolor*. The latter = Hebr. גנוי בְּרִמִּים, Assy. *burmu*.

4. p. 9: זִירִינָן להון בחוטא לתרין א[טרפי] על הדרי: זיר (Hark.), but of זור = press, Hebr. (Judges 6. 38) and talmudic, as זִירָא ומזורא, מצרָא זִירָא, זִירָא 'keeps it back' (BM. 16 b). Translate therefore: 'and we press both ends together through a thread.'

5. p. 12: מַחִיור משכונא. As Harkavy remarks, the reading מַחִייר is likewise possible, which is of course right. There is no reason to correct it so as to read מַחִייר (Hark.); it is found moreover also in Sch., p. 28, l. 7: מַחִיר, l. 10, 16–20: מַחִיר, 22, מַחִיר, 22 and 24, and is also preserved in Syriac, in *Kal* (ותרת בה נפשה בתורא, ואחנפין בכולה נושמה, וקם בחילאית: *Anecdota Syriaca*, III, 75, 17), 'and the soul (the life) returned to the bull, &c.' (comp. 1 Sam. 30. 12). In Pael in a Syriac inscription of Serrin (*Beiträge z. Assyriol.*, VII, 2, 160), l. 6: מַחִיר הנה עבדא יחבל: מַחִיר = מַחִיר Pael in the meaning of 'alter', 'destroy' (comp. B. Moritz, *l. c.*, p. 163) (Assyr. *taru* means also 'to alter'). Also Arab. تَارَّ = *circumivit, conversus fuit* (but not to be confused with تَارَّ, as in Payne Smith, p. 4412); Assy. *tāru* = turn, return, II. bring back; Hebr. תור = turn about (Num. 15. 39), then 'go to and from', 'spy out' (comp. חפר).

(7) [שמשא] דכתיב כל הנגע בה יטמא עד הערב וכל מאני דנניא
 (8) [אתתא די?] בא עליהון מיטמו וכל דקאדיב לבתחילה מחור מאניה
 in accordance with (9) [במאי ומס] תיב עד לפניא דכתיב כל וכו'
 Hark., l. 7 ff. from below. [וטמא] Lev. 15. 9; here,
 in Sch., instead of יטמא as in Hark., p. 41, l. 19.
 Also the beginning of fol. 12 b of MS. B, Hark., p. 43,
 is wanting; but again it may be supplied partly from
 Sch., p. 34. For by וכתב והנפש אשר תאכל end of fol. 12 a,
 Hark., p. 43, l. 18, not Lev. 7. 20 is meant, as Hark.
 assumes—in consequence of which he had to make a very
 forced statement—but Lev. 17. 15: נבלה¹⁵ וכל נפש אשר תאכל
 וטרפה באורה ובנר ובבס בגדיו ורחין במים וגו'. Thus רחיצה
 is expressly mentioned here with reference to one who eats
 a נבלה. The lacunae at the beginning of fol. 12 b, Hark.,
 p. 43, may be filled out partly from Sch. 34, 1-5:¹⁶
 (1) [לאנמור] נ דכל ... (2) רחיצה כו ... (3) דנניא עליהו ... [כל דנגע]
 (4) בהון מיסתיב עד דערבא שמשא וסאח'י ... (5) ... רי
 דכתיב אם וכו', in accordance with Hark., l. 19 f.—In Sch.,
 p. 33, on the other hand, supply from Hark. as follows:
 (1) [קא אמא ימים רבים בלא] ע[ת נדחה משום] (2) [נדחה קביע
 לה שבעה ימי טהרה, קא אמא נבי] בלא [עת] (3) [נדחה ימים רבים
 לאודעך ד] בלא עת נדחה [נמי] (4) [כי חזיא טפי משבעת ימים הו]א
 דצריכא ספירת שבעה אבל כי חזיא עד [שבעה] (5) [טמאתה שבעה ולא
 צר] יכא ספירת שבעה.

II. p. 44, l. 6 f. from below, read: ובין אתי זובו קלישא
ובין אתי זובו [סמיכא וא] בקא פי זכרות כגויה טמא הוא דכתיב רר
 בשרו א[ת זובו] או החתים בשרו. סמיכא = dense, thick, opposite
 of קלישא, is frequent in the Talmud; ואבקא = and sticks,

¹⁵ Anan has והנפש instead of נפש; the citations from the Bible are not always correct in Anan.

¹⁶ l. 6: על מאי אם, in Hark. Hence supply אם—not ואם—as *ibid.*, l. 19. Again an incorrect citation!

קא אמא : 20. p. 97, no. 37 (above to p. 37); למקרב בה מי שרי ליה
[קא אמ]א : 7. p. 4, l. 7 and Sch., p. 4, l. 7: ערות אביך אמא זכר אחרינא מי שרי ליה
... איש אמאי, אשה. So already in the Talmud : Naz. 7 a :
אמאי התם קרי להו רובים הכא קרי ; Tamid, 26 b : אמאי והא כו'
אמאי תיפוק : Ker. 5 a : ואמאי לעיילו מטות : *ibid.* ; להו פרחי כהונה
ליה דמלך כו' ; comp. below on *Sheeltot*.

16. pp. 64 below and 65 above : לחיוריה להווא מאנא .
חיוור is a regular inf. *pacl* of חור, as גיורי of גור, (above
to p. 12) of תור and so on.

17. p. 65 : ואדכא חיי הא מפרסת פרסה שסע איננה וכו' .
אדכא = אמא, as אמר = אמא, ¹⁸ ואדכר = ואדכא, frequently in Anan and
already in Talmud אימא, imp. and impf., with the Geonim
also אמא ראבא, *Geonica*, 80, below, and even אמליה instead of
אמא ליה = אמר ליה, *ibid.*, 266, l. 31, 32 ; 267, l. 27, 28 *bis*,
35, &c. ; also Anan, Hark. 34) ; and אימלך instead of
לעולם אימלך : 22, ראבא אימלך : *Geonica*, 103, 21 (also 199 below, *bis*) ;
בספסא רובין : *Geonica*, 106 = ספסא (also 199 below, *bis*) ;
וקולא זה שאנו : 244 = 364 (Hark., no. 244 = 364) קולר = קולא ; (לשחיטה
= זוטא ; (אומרים בלשון ארמי הוא קולר האמור, ומדומה בלשון יוני
= ובאקיר = ובאקי בסרא : *Geonica*, *ibid.* : אקיר = אקי ; וזטר
= איקרין = איקין, p. 88 (see below) ; (ובאוקיר
ולחבי טפי האבא כל הנוגע בהם יטמא חיי ²⁰ (p. 66) נבי :
... בהמות. It is the talmudic חיי = Arabic حَيَّ 'quickly,
soon' (Levy, I, 405 a). הא is here, as above להא

¹⁸ [קרייה מואן] ארכא שמה : 5, 233, *Geonica* (= אדכר) ארכא
שביעית מואן אדכר : 20, p. 120, *Comp. Hark., Resp.*, edit. *Gittin*, 9 b, *דכר*. Also assimilation to the following word :
שמה, Pas. 52 b, ed. *דכר*. Also *משיגיר* = *Geonica*, 104, 2) which originated
from מִתֵּן לֵא (Brockelmann).

¹⁹ Comp. also my remark in *Jahrbuch d. jüd. lit. Ges.*, X, p. 380.

²⁰ The points over " are not annulling signs (Hark.), but zere (—) of the
superlinear punctuation, perhaps pathah ḥaṭṭuph —.

מפרסת פרסה (also elsewhere), the same as האי; hence translate: 'and he mentions שסע וכו' soon after פרסה', and likewise below: 'soon with reference to . . .'

18. *Ibid.*: דפאריש בהו הא בָּם . . . דקא מפאריש חכא הוא הא נָם. Instead of בם read, as the following, נָם = Syr. לָם, for which Talmud has נָמִי (Nöldeke, *Mandäische Grammatik*, 485), comp. also Hark. below, p. 98: הא כל נשי נברי נמי הא אסירין: 98. לָם in gaonic literature in the sense of נָמִי, *Geonica*, 257, l. 20 f.: או מדעתיה קנו מינה הוה יכלא למאוי ולא הוה הוויא לם איבה.

19. p. 81: ומיד קראנון גבי שחיטת . . . וגבי איתויה לפסח (ומדקראנון = ומידקראנון). Read קראנון . . . גמרינ דבהד . . . ומי דאמא 46, מידאמא 48, e.g. in one word, as e.g. 48, מידאמא 46, and—דמי דאמא—some manuscripts דמיכראמא 75, מיחולא 71, and more (see my *Rechtsgutachten, &c.*, p. 231). Translate therefore: 'and since he named them, &c.'

20. p. 83: והיינו אמנוא דקא'ם תרין אטפי ביה כי שאקיל טופרי: דאעביר תרין אטפי. Harkavy translates הצאים, deriving it from טפי 'side'. But it is rather the talmudic אטפי, Ab. zarah 35 b: ביני: דקאי ביני אטפי, MS. M. אטפי, Hark., *Responsa*, 23: 'in the scars, pores' (of the cheese), Rashi הגומות, בתוך, Aruk הגבינה בתוך = folds²¹ in the cheese. As for gaonic literature comp. Hal. Ged., ed. Berlin, 532 (= ed. Ven., 129 c): אבל עיילה מחטא בין משכה: (רביני כסי ודהמסיסא וניקבו זה לתוך למשכא דברסא אי נמי ביני אטפי דבי כסי ודהמסיסא וניקבו זה לתוך זה לית לן בה) (ed. Ven. corruptly כסי); אטפי is thus 'fold', 'bend' = targ. עטפא *bend, *fold, then 'bosom', 'lap', in which sense it is quite frequent (Levy, II, 210); Arab. عَطَفَ = everything that is bent or folded, every curved place in

²¹ Comp. also Pseudo-Saadya's Comm. Ber. 55 a (ed. Wertheimer, 19 a): מורגי בהמה קפילת השוק והוא מעבאף אלסקאן; see below.

already seems to have noticed in his comment on l. 8 (though he points to ll. i-3!). The fragments thus supplement each other.

23. p. 3 is therefore to be read as follows: ... (1) מִיָּקְטָל. (2) וּבִלְמַעְשֶׁר הָאָרֶץ וְלֹא אִמָּא עֶשֶׂר כָּל [שִׁיחָה מִן הָאָרֶץ דְּמַע. ...] (3) מֵאֲבֵרָהּ אֵית. ... דְּכ' וִיתֵן לוֹ מַעְשֶׁר מְכָל: וְלִגְבִי [יַעֲקֹב כְּתִיב וְכֹל אֲשֶׁר תִּתֵּן לִי עֶשֶׂר אֶעֱשֶׂרנוּ לָךְ] (4) וְאִי אִמְרַת וְכֹ' דְּכ' וִידֵר [יַעֲקֹב נִדֵּר וְכְתִיב בְּנִדֵּר] (5) דִּיעֲקֹב וְכֹ' עֶשֶׂר [אֶעֱשֶׂרנוּ לָךְ. ... בְּהֵי הָדָרִי] (6) לֹא־מִזְרֵנּוּ וְכֹ' לְמַפְלָחָ קָמִי רַחֲמֵנָא מְחִיב לְמִיתֵן מַעְשֶׁר] (7) מְכָל וְכֹ' מִתְבַּעֵי לְמִיתְנִיָּה לְמַעְשֶׁר דְּכְתִיב בְּרֵאשִׁא וְהָאֵבֶן] (8) הִוֵּאת וְכֹ' בְּעִינָא לְמִיתֵן מַעְשֶׁר [דְּכְתִיב הַבִּיאוּ] (9) הַמַּעְשֶׁר וְכֹ' וְאִמָּא [קְרָאָה מִזְרַע הָאָרֶץ מִפְרִי] (10) וְלֹא כְּתִב בִּיהּ וְאִי (sic!) בְּמַפְרִי הָעֵץ דְּאִשְׁוִינָא לְהָאָרֶץ וְלִמְזֻרַע הָאָרֶץ] (sic!) (11) כִּי הָרְדִי וְכֹ' With l. 10 the fragment B breaks up. As to p. 30, see below. To ll. 4-5 comp. *Sheeltot*, no. 23. וְאִי (l. 10) is the letter wāw, frequent in Anan; likewise *Hal. Ged.*, ed. Berlin, 340: Pseudo-Saadya's Comm. Ber. 56 a (ed. Wertheimer, 19 b): וְאִי דְּפִטְר חֲמֹר. ... בֵּר מִן וְאִי — l. 11 read: ... דְּכָל דְּהָא [וְאִי מִאֲרַעָא כְּדִהְבָּא].

24. l. 14 read: דְּכָל עַרְוֵי [וְרִי מְחִיבִין בְּמַעְשֶׁר מִפְּרִי] הָעֵץ דְּכָל וּבְנִין עַרְוֵא דְּלֹא אִשְׁתַּנִּי To עֶרְוִי comp. Hark., p. 3: פִּירָא. ... מְבִרִיתוֹ 'manna', Syr. עֶרְוִיא (PSm. 2975), Hark., *ibid.*, p. 123. — l. 15 f. read: דְּאִפִּילוּ מֵאִי דְּנִפְק [מִן אַעָא וְלֹא] (16) פִּירָא הָא [וְ] אִי: כִּנּוֹן עַפְצִי. ...

25. l. 18: טְפִי בִּיהּ מִם מִם דִּיִּקִּי כָּל דְּמַחְכִּיל מִתְבְּרָא מִזְרַעִים וּפִירֹת. ... Sch., p. 67, remarks that the words דִּיִּקִּי מִתְבְּרָא (sic!) and מִתְבְּרָא are doubtful and that we may read also דִּי instead of תִּי in מִתְבְּרָא. Read therefore מִן [רַע] instead of מִן [רַע] and in place of מִתְבְּרָא: מִדְּבָרָא (= מְדָבְרָא, see above), דִּי יִסְרִי perhaps = דִּי יִסְרִי, as p. 88: אִיקִין = אִיקִין, see above; comp. also Hark., *Resp.*, p. 160: נִיקְרוּיָהּ Harkavy corrected, דְּלֹא נִיקְרוּיָהּ גִּלְאָנָא

26. p. 4, l. 7 ff., read: קא אמ' איש וכו' אי זרעה מאי (8) [דקדיש ה]יה ליוה בכל (sic!) מילי וכו' אילא (9) [על פרקו]נא ליוה. דארעא קאים וכו' ראשה לא (10) [איה לה ח]לק בארעא וכו' is an abbreviation of the Tetragrammaton,²² as the occasional יו"י, comp. also p. 30 ליוה (see below). As to לא־איה, which is by no means rare, see Remarks on the *Sheettot*.—l. 15 read: (רמעש)ר דבקר וצאן (sic!).

27. p. 6, l. 4 ff., read: ... קא אמא [פטר כל רחם בבני] (5) [יש' באדם ובבהמ]ה דאקרים כתב [בבני יש' קמי] באדם (6) [ובבהמה לאדעך דבבור] דמודרע בני יש' לא [צריך לאקדוש]יה רכת' (7) [לי הוא לאדעך רעל בכור] (9) [ראיתליר] Ibid., l. 8 ff. read: קא אמא וכו' [איתלורי בני וכו'] (11) [קא מנמר] לך דהאיי וכו' ולא (12) [דאזודרועי אזור]רע בני וכו' שנה בשנה (13) [קא אמא דל]א מיבעי משבקיה וכו' (comp. Revel, *ƳQR.*, N. S., III, 392, note), see Hadassi, Alph. 204, letter ע.—p. 8, l. 17 ff., read: רכ' על (וכל r.) (18) [פטר וג'] (Exod. 13. 13) וכת' ואם בבהמה [ה]טמאה וגו' (Lev. 27. 27) הארך דא[יתלודי] הוא איתליר בני (19) יש' ראמא פטר (sic!) חמור ופטר לישנא (sic!) [דאי]תלודי [הוא]... [sic!].

28. p. 7, l. 13 f.: ואמא בתריה וכל בהמתך באלה לבהמ[ה] טהורה: קאָל לה = קאָל (see *ƳQR.*, loc. cit., p. 391), read: דכאיל: כללי רבייל (comp. talmudic, *Hal. Ged.*, ed. Ven., 71 b: so also below, p. 9, l. 4 f.: וכליה ל... [בני] הרדי למינ[מר] מיהרדי: וקאָל ליה, וקאָל ליה =

29. Ibid., l. 27 f., read: ומתקלא כ' קיראטי האוי דכ' ע[שרים] גרה השקל] (28) אלמא דבעלמא האבי איתיה למתקלא וב[וכרא] p. 12, l. 25 ff., read: ומניא שיתין מתקלי האוי במתקלא בר עשרין (26) [קירטי דכ'] ומניא שיתין מתקלי האוי במתקלא בר עשרין (26) [קירטי דכ'] (27) [עשרה משאת, Benjamin Nahawendi, comp. וחסמה שקל] המנה יהיה לכם אבל דברי ענן וצ"ל כי בכר חמשת: 2 c, fol. 2, Gozlow, 1834, בנימין

²² A similar abbreviation is perhaps also the word לִי־ on p. 5, l. 2.

גִּירָה (Hark., p. 127). The word גִּירָה is not Arabic (= قِيرَات), as Harkavy thinks (5,000 'qirat' cannot possibly be equal to 3,000 shekel!), nor is it a gloss, but it is the Hebrew גִּירָה (plene), *h. e.* 'גִּירָה is equal to קִירָאט', as Anan actually says p. 7, l. 27. Comp. also the citation from Jepheth's Commentary to Exod. 30. 13 (Hark., 206): 'וקולה עשרים נרה קיל עשרין קיראט וקיל דאנק וכו'. The value of the kikkar = 3,000 shekel was fixed by the Geonim as 6,000 Arabic mithkal (see my remark, *FSR.*, 1913, p. 439, n. 128), but Anan fixed it at 5,000 mithkal (= מעות) Sheshdang, and Nahawendi at 10,000 mithkal (= מעות), as also Ibn Janah, Neubauer, p. 330; comp. also Hark., *Responsa*, p. 38.—As to הכי הם, see below.

30. pp. 14, 21 ff., read: 'ואסיר (22) [למישדא] מומא בבוכרא וכו' ובי יהיה (23) [בו דה] אווי ביה מומא מנפשיה וכו' (24) [למישדא ביה] מומא וכו'. Comp. Bekorot 33 b and *Sheeltot*, no. 44 (HG., ed. Berlin, p. 597): 'ואסיר למישדא מום בקרשים עד שיפול בו ממילא' (עד דנפיל ביה ממילא: *Geonica*, 362) שני כל מום לא וכו'.

31. p. 15, l. 17, read: 'אמא מחצ' (*sic!*) קא אמנא וקא תאני (*sic!*) האני תאני instead of האני תאני, which Sch. himself considers as doubtful. 'he repeats', חני = תאני, comp. תנא, ll. 22-3.

32. p. 17, l. 14 f., read: 'פקדינן רחמנא דלא למינסב גברא מקרובות דיליה ולא [איתתא] (15) האם (*sic!*) לק[רו]בי [דו]ל[ה] רב' (הם = התם) (instead of האם, Persian هَمْ, Neo-Syriac הם (see my *Rechtsgutachten*, &c., p. 252), 'likewise'. האם (with א) also in a gaonic responsum, *Hakedem*, II, 86 (no. 7): 'וששאלת המל ביום הכפורים ואיכא יין' (והאם דמנהאנה לאיתויאנון למילה מברך על היין או לא? and although it is customary to bring this to the circumcision (it remains questionable) . . . מברך (Hark., *ibid.*, forced); similarly, Mand. האם, Nöldeke, *Gramm.*, 465.—As to the

contents and style, comp. *Sheeltot*, no. 95 : ראוור להון לרבית : ישראל למינסב איניש קריבתיא שנאמר איש איש וכו'.

33. p. 23, ll. 1-5 (until . . . ומאן) is cited verbatim by Abulfaraḡ Furkān (פ"ב) in his manuscript commentary on Lev., Hark., p. 67, l. 4 f. The beginning of this passage can therefore be supplied from Hark., p. 66, no. 24 (את זה תאכלו וג')—p. 67, l. 4 (דכתיב אך) ! Similarly the lacunae in ll. 1-4 may be closed up through Hark., 67. Instead of ראיית, here l. 4, in Hark. : 'while it is still'. — *Ibid.*, l. 30, read : אבל עופות (טהורין) and p. 24, l. 1, read : (sic instead of שני) ויוני (sic instead of ש) פנינא ויוני (sic instead of וטביא) וטביא (sic instead of וטביא) (וב) ות[הו] : ויוניא ושפנינא וטביא וכל חיה דשרי לן לאוכלה אישתכח : וכל ציפרי אסיר לן באכילה לבר מיוני ושפניני כה הו דירכא משתחטין : p. 24. 11.—דלא טהור בעופות אלא שפניני read דירכא (= כההו) כההו, comp. ההו, p. 28, 12-13.²³—p. 25, l. 12 f., read : ומינו דמכרת מטה אהרן מדכרת לחות העדות : [דמטה אהרן גבי לחות העדות] הוה יתבא דכח' השב . .

34. p. 27, ll. 1, 11, 12 : האבוקי, l. 7 : חא[ביקיי]. The meaning of the word becomes evident from l. 12 : גמרינן : דגדודא חאבוקי הוא ; hence 'scratch', 'scribble', 'carve', 'carvings'. It originated from חאבוקי ; Syr. سبلا 'linea', سبلا 'step', the former being explained by the Syriac lexica as סורגא וסורקא דכתיבתא PSm., 1226 ; the latter is found in the Talmud חווקין, חווקין, but in one explanation—certainly gaonic—of the Aruk, והוא עין ארוך וחוקו בו חבקים מקום נתינת פרסת הרגל ; אסכלה, s. v. therefore likewise with ב !—l. 7 : בקליל אית read בקלילית 'easily', adv. like similar Syr. and Mand. words ; opposite l. 8 : דעני [דמק]רב (sic!) לנבך.—l. 23 r. בקשיותא.—l. 26 r. ואמא היא שמלתו לעורו :—p. 28, l. 14 f. r. : ואמא תרין ליש[אנ]י

²³ *Geonica*, 234, 19 : כההו אנפא .

ול[א א]מא והיא שמלתו דכד לא אית (15) ליה אלא חד גלימא או חד מניאנא. לבושא תרויהו כחד מניא[נא] חשיבי ומחיבת לתירוית[ר]ויהו[ן] ומחיבת instead of מניאנא = מניאנא; instead of ומחיבת ומחיב אַח.

35. p. 30, l. 1 ff., read: [פקדינן רח]מנא לעשורי לקמיה לכל (2) [מעשר ה]ארץ מזרע הארץ מפרי העץ ליהוה הוא [קודש ליהוה] (3) [קא אמ]א כל (sic!) מעשר הארץ טפי בארץ הי ואקדים כת[ב כל] (4) [מעשר]ר (sic!) דכל דהאוי מן הארץ מחייב במע[שר] ואמא [כל] (5) [מעשר] ליה (= ליהוה, see above) בתר מות יומת²⁴ ד[מאן דלא?] (6) [יהי]ב מעשר מְחִיב לְמִיתָה ואמריה [האר]ץ ולא אמא וכו' (7) [האר]ץ ולא אמא וכו' (see above). To l. 5 end comp. p. 3, l. 1: [מיק[טל?]; the space of the lacuna (to judge from the points) really seems to be too large for דלא. מאן. The lacunae in l. 7 f. may be filled out from p. 3 (see above). Read therefore l. 12 f. as follows: דכי היכי דמ[חיב] אינ[יש] למיפ[לח] (sic!) קמי (13) רחמנא מחיב דכי היכי דמ[חיב] אינ[יש] למיתן וכו' ו[לב]ית בני[שתא] (sic!) וכו' Last line read probably: [ד... ד]אשנ[א] שוינן לת[ארץ]. see above.

36. p. 32, l. 9 ff., read: [קא] אמא לא תחלל את שם אלהיך קא רזים לך דמאן (10) [דעביר הכי ח]ללה לאוריתא דרחמנא כולה דשם יי (11) [אוריתא נמי מקרי]א דכתיב ארון האלהים אשר נקרא שם (12) [שם יי צבאות ובארון לוח]י אוריתא הוא דאיכא דכתיב ואשם את (13) [הלחות בארון אשר ע]שיתי ויהיו שם אישתכח דאוריתא נמי אקריא שם יי דכח' להעלות משם את ארון האלהים אשר נקרא שם שם יי צבאות יושב הכרובים עליו קא אמא ארון האלהים אשר נקרא שם שם יי האכי קא אמא דבארון אית ביה שם יי ובארון לא איכא אילאו תורה דכ' ויקח ויתן את העדות אל הארון אישתכח דקא קארי לה לאוריתא שם יי מעשה הארון בעבור: Comp. also *Responsa of the Geonim*, ed. Cassel, no. 15, p. 3 b

²⁴ *h. e.* after the מות יומת of ver. 29! How Sch. found this unclear I fail to perceive.

המלאך שהיה מהלך לפניהם שהארון הוא המלאך שנ' הנה ארון הברית ונ'.
33-4, see above.²⁵

INDEX OF WORDS COMMENTED UPON

- אבק = cleave, stick (no. 11).
 אֶבְרָא = arm (no. 8).
 אהר (= אחר) = tarry, linger (no. 22).
 או כמא = or however much (no. 10).
 אטפי (= עיטפא) = fold, bend (no. 20).
 אמא (= אמר) = (gaonic also אימלך) (no. 17).
 אמאי = wherefore, why then ; introducing a question
 (no. 15).
 אמר (= עמר) = submerge (gaonic also מימרא) (no. 13).
 ברם (= ברימין מיברם) = weave, twist (no. 3).
 גדר (= גרדי, גרדרי) = (no. 1), see כדאר.
 גדל (= מיגדליה) (no. 2).
 אדכא (= אדכר, also gaonic) (no. 17).
 רִבְרָא = field (no. 25).
 רם (= מידם) = last, continue (no. 7).
 האם (= האם) = likewise ; although (the latter only gaonic)
 (no. 32).
 וא = letter wāw (no. 23).
 זור (= זיר) = press together (no. 4).
 זי (= זיל) = gaonic (no. 21).
 חי (= חי, הייא) = soon (no. 17).
 חבוקי (= חווקי) = scratch, carvings ; gaonic חבוקיי
 = steps (no. 34).
 חיור = make white (no. 16).

²⁵ p. 34, l. 9 end, read: על משכב אחר[נא], comp. l. 10: כלי אחרנא
 according to Hark., *l. c.* — l. 15 read: הם כי טמא[ת זב הוא]
 רובה נמי [הם כי טמא]ת זב הוא, comp. Hark., *l. c.*

- אקי (= אקיר, אוקיר), gaonic (no. 17).
 גרדא, 'Nabatean', see גרדא.
 כבין (= חבין) = pressed (no. 12).
 בוס, (מתבוס, מיתבוס) = be rebuked, punished (no. 14).
 באל (= באלה) = put together (no. 28).
 פי, פי מבדי (no. 9).
 כמא (no. 10).
 לם, Syr. and gaonic (No. 18).
 להמא, ליגרא, Mand. (Introduction).
 מאהר, see אהר.
 גם, נמי (no. 18), see לם.
 נהמא, ניגרא, talmudic (Introduction).
 [סמיכא], opposite of קלישא (no. 11).
 ספסא (= ספסר) (no. 17).
 איטפא*, see עיטפא.
 ערורא, ערורי = manna (no. 24).
 (ניקריה) (= ניקיה), יקי (= יקרי?), (קרא) (nos. 21 and 25).
 קלילאית = easily (no. 34).
 שדא, (מישר, שידא) = spin (no. 1).
 מושגיל ליה (= מושגיר ליה), gaonic (no. 17).
 תור (= תיורי, מתייר, תייר) = return, bring back (no. 5).

(To be continued.)

HISTORY OF JUDEO-GERMAN LITERATURE

1890 די געשיכטע פון דער יודישער ליטעראטור ביזן יאהר Von
Dr. M. J. PINES. Warsaw, 1911.

Die Geschichte der jüdisch-deutschen Literatur. Von Dr. M. PINES.
Nach dem französischen Original bearbeitet. Von GEORG
HECHT. Leipzig: Verlag von GUSTAV ENGEL, 1913. pp. 253.

Originally written as a thesis for the doctor degree at the Sorbonne in 1910, under the title of 'Histoire de la littérature judéo-allemande', Dr. Pines's history has evidently met a need, to judge from the translations made of it. In 1911 the work appeared in a Yiddish translation by Dr. Eliashev, a critic well known in Yiddish literature under the pen-name of Bal-Mach-schovoth. A year later it was published in Russian, and in 1913 in German.

The astounding growth of Yiddish as a written language has been so rapid that many otherwise well-informed persons have not as yet realized its importance. A language spoken by about seven million persons, or a majority of the Jewish people, and as widely spread as Israel is dispersed, deserves considerable attention. Not that 'Jüdisch-Deutsch', as it is generally called in West-European Jewry, is a newly-spoken language, but its growth as a written, or rather printed, language and the evolution of its literature are so very recent.

The adoption of words from foreign languages is a necessary and common trait of all peoples, English itself being a most noted product of extensive adaptation. The Jews have ever shown a propensity to adopt the language of the people surrounding them by writing the foreign words in Hebrew and by recasting the construction of the phrases into forms more suitable to the Jewish mode of reasoning. This is both a result of the great adaptability of the Jewish race to the economic and social demands of its environ-

ment and of the unique tenacity it has displayed in adhering to its own racial characteristics. In Aramaic the Jews recorded their legends, in Spaniolish they attempted to preserve their culture, and in Yiddish the Jewish people is expressing its innermost feelings and disclosing the fibres of its very existence.

A history of a Yiddish literature written by a man with first-hand knowledge of the material and the reading public at once starts forth under good auspices. Dr. Pines's work contains in its two volumes about 500 pages, and covers the history of Yiddish literature to the year 1890. Promise is held out of a continuation of the work. This is most desirable, as Yiddish literature has much expanded and flourished during the last decade; many writers have come forward and much poetic feeling as well as broad intellectuality have made their appearance.

The author at first discusses the origin of the language, the elements of its make-up, the existing dialects and its grammatical characteristics. 'The Yiddish language', says he, 'was born in the ghettos of Germany, but its development has received its definite character in those of Poland.' It is impossible to determine even approximately the beginnings of Yiddish as a language. Traces of its appearance begin to show faintly in the fourteenth century, but only in the sixteenth it began its real life. The author advances the theory that as long as the Jews who spoke 'Jüdisch-Deutsch' lived in Germany amidst a German-speaking population their language could not rise above a jargon. 'It could not free itself sufficiently of its German *milieu* and undergo that process of formation which should differentiate it radically from its mother tongue, impress upon it the spirit and the character of the people, and create a language which should differ from the German language as much as the Jewish people differs from the German people.' This creative work has been done by the German Jews who were compelled since the sixteenth century to emigrate to Bohemia, Poland, and Lithuania. To this should be added that the Jews found the state of culture of the latter countries much below that of Germany, which, naturally, made the immigrants adhere to their German traditions and language. Thus the

sixteenth century marks the real beginnings of Yiddish. In a comparatively short time German Jewish had conquered the Slavonic spoken by the many Jews who lived in Russia and the acquired provinces long before the formation of the Russian Empire.

The author takes up the beginnings of Yiddish literature as presented by the early popular stories of the sixteenth century, and the books of many a legend which made their appearance in the seventeenth century, and from which our grandmothers still derived their lore.

An interesting view is obtained of the Haskalah in Russia. It is an introspective view. It is the Haskalah movement in its effects, not on single individuals of distinction, but on the great numbers of poor Lithuania with its numerous and ardent students of the Law. The author's presentation of the maskil type is excellent—education based exclusively on Hebrew; autodidacticism with its inherent traits; the peculiar use of Yiddish with a forced injection of German words, and mainly a rather vulgar rationalism which formed the basis of action. A popular movement, the Haskalah has never been. The Jewish masses instinctively felt 'the egoistic basis of the Haskalah preaching,' which led to a separation of the masses from its aspiring intellectuals. Much has added to this attitude the dislike of Yiddish prevalent among the maskilim, a dislike which, in some instances, developed into hatred. This is more curious as the bulk of the maskilim spoke no other tongue, nor was there any other medium of communication between them and the people at large. Nevertheless, by force of circumstances, the maskilim contributed greatly to the spread of Yiddish literature.

Out of the maskilim also came the founder of modern Yiddish literature, S. J. Abramovitch. His first works were written in Hebrew and dealt with questions of education and literature; he also reworked into Hebrew a four-volume German natural history. Under the pressure of the maskilic atmosphere, Abramovitch underwent an inner struggle before deciding to write in Yiddish. Compelled by a sense of duty to his people he took up its language.

'Of what use', says he, in an autobiographic note, 'is all the intellectual and physical work of a writer if his own people get nothing out of it? . . . For whom am I working?' A series of novels on Jewish life are the life-work of the venerable father of Yiddish literature. In them he depicts Jewish life with a master-hand, and he obtains a deep insight into the workings of the Jewish soul. The vehicle of his expression, the Yiddish, he moulded and welded into literary form, its phrases he hammered and shaped to logical sequence, and its words he filed and polished to reflecting surfaces and sharp points. Thus Abramovitch created an expressive and elastic medium which enabled him to portray in his books the fleeting shadows of the Jewish psyche, and to represent that complex compound of deep religiosity and everyday empiricism, that unbounded optimism and defenceless living which made up the existence of the Russian Jew. The best chapter in Dr. Pines's book is the one devoted to Abramovitch.

The reactionary tendencies in Russia in the beginning of the eighties of the last century denote the expiration of the Haskalah. The intellectuals who put their faith in the blessings of a peripheral assimilation were awakened from their dreams by the icy chill of ill winds. Those of them who had warm beating hearts for their brethren returned to their people. The poet Frug was one of them. Recognized young as a promising singer whose racial plaintive note gave an additional charm to the fine ring of his rhyme, he achieved great success as a Russian poet only to turn to the language of the Jewish mass and to become a Yiddish poet. With him he brought to Yiddish poetry a graceful verse and a love of nature, a romantic yearning for past forms holy by their age and a fervent hope in the resurrection of the Jewish people in the land of its fathers. With Frug in Russia and Rosenfeld in America Yiddish poetry began its growth. The author devotes a chapter to each of them. He gives, however, no indication of the fruitful development Yiddish poetry has had since.

With J. L. Perez (his Stories have been published by the Jewish Publication Society) Yiddish literature has attained a depth of thought and height of conception never attempted before.

With Perez it has been placed in the ranks of the world literatures. The broad view of Perez sees the connecting-link between the old and the new; in the modern son of Israel he recognizes the spiritual brother of the *hasidic* enthusiast. Perez lays bare to our eyes the strong social fibre which makes of the Jews a people notwithstanding the lack of so many material bonds which usually hold nations together. He depicts before us that great affirmation of life with its optimistic faith which alone has enabled the Jewish people to uphold its spirit amidst an ocean of ignorance and barbarism. Without preaching and without sentimentality on his part we discover in the writings of Perez wherein lies the strength and the great resilience of our people.

Dr. Pines devotes considerable space to the evaluation of Perez's works and art. He falls, however, short in his appreciation of this great writer whose heights he does not scale.

Dr. Pines's critical work treats matters in an average way. The author gives a fair judgement but without display of brilliancy. He does not create atmosphere and his colouring at times becomes monotonous. The work is really a series of chapters on the history of Yiddish literature, incomplete and insufficient. The mere fact, however, that a two-volume work of serious purpose should prove incomplete is in itself an indication of the growth of the subject it treats of.

THE HASKALAH MOVEMENT

The Haskalah Movement in Russia. By JACOB S. RAISIN, Ph.D.,
D.D. Philadelphia: THE JEWISH PUBLICATION SOCIETY OF
AMERICA, 1914. 355 pp. and 6 photographic reproductions.

As time passes our generation is gradually shifted into a position from which it is enabled to obtain a perspective view of that commotion of the spirits which is generally denoted by the term Haskalah. The historic perspective thus gained co-ordinates the various phenomena of the past and establishes a scale by which to measure their relative importance. Seen through the prism of time many a colour vanishes, and shades hitherto ignored assume a bright hue; viewed through the distance of years the stormy waves produced among the Jews in Russia by the Haskalah movement are hardly more noticeable than a gentle swelling of the sea. Because like wave motion the Haskalah movement was a commotion of the surface only, the great masses of the Jewish people remained undisturbed. The instinctive feeling of the people, based as it was on centuries of bitter experience, could not see salvation in acquiring a veneer, not of real culture, but of the manners of their rulers and their oppressors, be they ever so polished. Not more was offered to it. Highly gifted individuals could and did acquire knowledge and culture at the expense of incredible efforts, but to the everyday man, to the great mass it merely meant the opportunity to be of the company of the minor officials who represented Russian authority in the provinces, and who mostly were grafters and drunkards. The Haskalah movement in Russia tended to the assimilation of the outer, the material, life of the Jews with that of the ruling race of Russia. It was not an assimilation of manners and habits as was brought about in the course of events in many lands under the pressure of economic necessity; it was an assimilation preached by doctrinaires. And the Jewish people, without philosophizing whether according to learned definition it was a race or a

nation, felt that the salvation offered portended danger to its existence as a group, and rejected it.

In his enthusiasm Dr. Raisin claims a much wider scope for the Haskalah movement than it, indeed, covered. Preaching in Russian in a synagogue as well as organizing a labour party are Haskalah to him. 'In its wide sense Haskalah denotes enlightenment', says the author. 'Those who strove to enlighten their benighted co-religionists or disseminate European culture among them, were called Maskilim.' This is not so. Neither the students who frequented the Universities nor the working men who organized the Arbeiterbund belonged to the Haskalah or held friendly feelings for it. The sway of the Haskalah movement was much narrower.

To assume that the Jewish people lived in 'the darkness of the Middle Ages' until the Haskalah taught it to appreciate Western culture is erroneous. The Jews possess too much common sense not to appreciate the economic value of mastering the language and conduct of the people surrounding them. The author's work itself contains many proofs of the general education and of the esteem in which the sciences were held by the more learned in Israel. Only in times of distress, when the waves of persecution threatened to swallow the entire Jewish people, its leaders built fences around it to save the weak and the straying. And as long as the surrounding culture was not of a higher grade than their own there was no necessity for the Jews to adopt it.

Essentially and mainly the Haskalah was a revolt against a sterile dogmatism in matters religious, and excessive traditionalism in matters of conduct. As such it naturally appealed to individuals and not to 'compact majorities'. It was a struggle for the personal freedom of the individual, and one can find in it a distant resemblance to the nihilism of those days in Russia. Yet it was a mild revolt. Attempts were made to explain forms and dogmas by rationalistic methods, which sometimes led to ludicrous results; minor matters of conduct were disregarded; a slight scepticism prevailed, but traditional Judaism faced no open revolt and the

maskilim, with few exceptions, attended the Bet ha-Midrash regularly three times daily. Most of its efforts the Haskalah spent in discussions and dissertations. Its great service was in preparing the minds for new forms of life.

The author gives an interesting and instructive review of the history of the Jews in Russia to the beginning of the last century, and traces the potent influence of Mendelssohn in Russian Jewry. He shows how under the influence of liberal ideas of Western Europe the leaders of all shades of Russian Jews acquired a more liberal view, and how the proselyting formally instituted by the Russian government succeeded in converting some prominent Jews and in estranging the Jewish people from all officialdom and its rich and influential Jewish friends. After the abortive attempts of Alexander I to convert the Jews by emoluments came the draconic laws of the corporal on the throne, Nicholas I, who tried to accomplish the same by force. Realizing after years of atrocities that even the 'slaughtering of the innocents' did not succeed, the Czar tried to re-educate the Jews by administrative procedure. Then the quixotic quest of Dr. Lilienthal took place. The gifted and popular preacher wished to believe in the good faith of the government, and could not see through its perfidy until it finally became clear to him that 'education without emancipation leads to conversion'. Dr. Lilienthal then left Russia, but the Jewish people remained behind for future persecutions. The author presents a picture of those times as well as of the reign of Alexander II. With the reign of the latter all real work of culture among the Jews began, because the government alleviated their burden. The Russian Jews quickly perceived the advantages of a worldly Russian education opened without condition, and flocked to it. Hopeful as were the liberal elements of Russia, were also the Jews; they both still believed in the possible goodwill of the autocracy. Great progress was made by the Jews in those times economically and intellectually, and when the inevitable reaction set in with Alexander III, in the eighties of the last century, it found a much-changed Jewish people.

The author denotes the end of the nineteenth century as the

'Awakening'. And, truly, an awakening it was for many stray sons of Israel, who believing themselves emancipated and true Russians awoke to realize their loneliness, and returned to their own people. Many, however, remained too contaminated to return to their own, too sick to enjoy among strangers.

Dr. Raisin has evidently put much labour in his work. His bibliography attached to the book covers the entire field of literature on the subject, and testifies to the author's zeal. To the latter may be ascribed a rather indiscriminate selection of authorities and quotation of names of scant importance. The poetic selections quoted in the book, one would believe, hardly do justice to the author's taste. On the whole the work will prove of great interest to those desirous of informing themselves on the history of the Jews in Russia. The book has a pleasant appearance and is well got up.

LEON S. MOISSEIFF.

New York City.



KOHUT'S 'HEBREW ANTHOLOGY'

A Hebrew Anthology. A Collection of Poems and Dramas inspired by the Old Testament and Post Biblical Tradition gathered from Writings of English Poets, from the Elizabethan Period and earlier to the Present Day. Edited by GEORGE ALEXANDER KOHUT, with an Introduction by HUDSON MAXIM, in two volumes. Cincinnati: S. BACHARACH, 1913. pp. xxxiii + 1,399.

Under this title Mr. Kohut has embraced a number of poems and dramatic selections, whose variety and richness will impress those who are familiar with the ground covered, and doubtless amaze those to whom the field is a fallow one. Undertaken with the purpose of showing the influence of the Old Testament and of later Hebrew tradition upon English poets, it admirably fulfils its intention.

The strength and the extent of Hebraic influence, not merely along ethical or religious lines, but upon the intellectual and literary life of the civilized world, are practically just beginning to be recognized. As Professor Baldwin says, 'the crowning glory of the nineteenth century was . . . the rediscovery of the Old Testament'. Especially has this influence been felt in English literature, which more than any other has been determined by it, and to a greater degree than by any other single formative factor. The English heart and mind have been profoundly affected by Hebrew thought and ideals. 'Though the language of the authorized version is English, not Hebrew, none the less', says Dr. J. G. Tucker (*The Foreign Debt of English Literature*), 'the imagery, the similes and metaphors, the fiery turns of exhortation and denunciation, the fervent question and apostrophe, all these and other elements that make up style, are, apart from rhythm,

Hebrew, not English.' It is not a question of style only. The matter as well as the manner of English literature are profoundly indebted to the Bible and to later Hebrew writings and tradition. The deeper-lying and more effective influence of the spirit is no less apparent. It permeates the whole range of English thought and culture. The Hellenic and the Hebraic spirit are not contradictory. They are in reality supplementary to each other. Their judicious admixture would have saved genius from much of its ethical idiosyncrasies and theology much of its narrowness. To a greater extent than any other have the English people made this admixture. Whether consciously or not they achieved an adjustment between culture and religion and found the marriage a congenial one.

The complete number of writers, the offspring of this marriage, who have translated their filial affection into self-conscious expression by the production of poetry, drama, fiction, history, essay, or commentary, dealing with Hebraic topics or themes, will probably never be known. But Mr. Kohut has given us an inkling of how many have done so within the single fields of poetry and the drama. The range of authors covers the millennium of English writing from Cædmon to Kipling. The topics embrace poems and plays on Biblical characters and episodes, poetical renditions of psalms and prayers, on the Apocrypha and post-Biblical tradition, on tales and legends from the Talmud, Midrash, and other sources. There are poems in defence of the Jews, poems of appeal, and poems of tribute. Here and there a discordant note creeps in, as e. g. Kipling's 'Fifth River', but as a whole the Anthology may well afford the Jews a cause for pride, as it does the non-Jew a cause for earnest thought.

It is a curious fact, however, that the Christian mind can rarely dissociate the Jew from the Christ-story. The Jew of the ante-Christian period is a noble figure. He was prophet, harbinger, kinsman, brother of the Saviour. The tone of the literature that deals with the Jew prior to the advent of Jesus is unexceptionable. But the refusal of the Jews of his own generation to accept Jesus, their alleged participation in the tragedy of the

crucifixion, cannot apparently be absolved even in the most generous mind. While it is true that the selections of Part IV, pp. 599-632 inclusive, of Vol. I, are entitled 'For Israel—Poems in Defence of the Jews, Tributes and Elegies', yet whatever of praise or tribute is voiced, is based as a rule on Biblical claims. Holmes's 'At the Pantomime', no doubt well intentioned and kindly meant, is an example. The same thread is woven into many of the selections.

If it be true that the songs of a nation are a reflex of its spirit, the Jew might well hope for some measure of appreciation and recognition for the incalculable richness of the contribution he has added to the treasury of human thought and ideals, as amply evidenced in these two volumes. But the seemingly undiminished strength of anti-Semitic feeling, in one form or another, whether the brutal physical persecution of Russia and Roumania and other south-eastern European states, or the refined cruelty of the social and political ostracism of western nations, denies the prospect of a realization of this hope in the near future. Doubtless it is the Jew's part to continue to give to the world its most precious inspirations and its most sordid martyrdoms. A perusal of the Anthology will help him to continue the one and endure the other.

Doubtless there is the implication in this that whatever may be the position of the Jew in the modern world, however much he may mingle with its life and its work, and be in turn affected by its spirit, yet, after all is said and done, his real value as a contributing factor of human progress is inseparably connected with his oldest yet most wonderful possession, his Bible and his early literature. There is here a moral for the Jew himself. It is not the smug, materially-successful Jew who appeals to the sentiment or evokes the admiration of the world, but the loyal and faithful descendant and follower of prophet, sage, and psalmist. The 'Book' has been the world's greatest literary as well as moral impulse. The 'people' thereof are a factor in the world's life only so far as they are the 'people of the Book' and identified with it. Should Mr. Kohut's Anthology serve to bring home this fact to the

Jew himself, and bring him to a juster recognition of his own, it will have rendered a far greater service than merely to have opened the eyes of the Christian world to the appreciation which its finer spirits have accorded to the place and purpose of Israel.

The Anthology is well arranged in two volumes of excellent appearance and workmanship. The selections evince wide reading and scholarly research, bringing to light many little-known and unknown poems, as well as embracing those with which the reading public is familiar. The systematic divisions and indexes make the contents easily accessible for reference, as the volumes themselves afford delightful opportunity for occasional or sustained perusal. The work deserves a place in every well-equipped library.

EDWARD N. CALISCH.

Richmond.

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ALLEGORICAL REPRESENTATION OF THE SYNAGOGUE IN A TWELFTH CENTURY ILLUMINATED MS. OF HILDEGARD OF BINGEN

BY CHARLES SINGER, Oxford.

THE general subject of the representation of the Synagogue in mediaeval art has been well reviewed by Hildenfinger,¹ and by Cahier and Martin.² In the following pages we propose only to discuss certain miniatures and the accompanying text of a particular manuscript which has not been previously explored from this standpoint. We may begin our review by placing the reader in possession of a few facts concerning the authoress of the work.

Hildegard was born at Böckelheim in 1099, and died at Rupertsberg, opposite Bingen, in 1180. At the age of eight she was placed in the hands of Jutta, a female recluse who had taken up her dwelling on the Mount of St. Disibode, a few miles from Bingen and on the banks of the Nahe. Jutta gradually collected around her a number of other pious women, and thus formed a nunnery under the Benedictine rule. On the death of Jutta in 1136, Hildegard took the office of prioress, but in 1147 she and some of her nuns migrated down the Nahe to Rupertsberg, where a second convent was established.

Hildegard was a woman of extraordinarily strong and

¹ P. Hildenfinger, 'La Figure de la Synagogue dans l'art du moyen âge,' *Revue des Études Juives*, XLVII, 187.

² C. Cahier and A. Martin in *Mélanges d'Archéologie, d'Histoire et de Littérature . . . sur . . . moyen âge*, vol. II, Paris, 1851, pp. 50-9, and also *Monographie de la Cathédrale de Bourges*, Paris, 1841-44.

original character. The freedom and the terms with which she denounced the great ones of the earth, even the Emperor Frederick Barbarossa himself, as well as the character of some of her visions, and much of the setting of her life, recall the Hebrew prophets. Typical is her last public act. Having allowed burial in her own convent cemetery to a youth whose stormy life had ended in what she regarded as reconciliation with the Church, Hildegard defied Pope and Bishops, and incurred for many months the ban of the Church rather than allow the desecration of the grave, or admit either the youth's death in sin or her own error.

Hildegard is distinguished in the field of science by common sense, and a respect for what in modern parlance we should term 'hygiene'. Her *Physica* comprises a collection of the scanty scientific knowledge of the twelfth century, and is of special medical interest as containing a description of the nature and uses of herbs. The *Liber Simplicis Hominis* contains scattered throughout its chapters valuable glimpses of physiological conceptions prevalent in Germany at the period. Another work, the *De Causis et Curis Morborum*, to which her name is attached, appears to us to be spurious, and probably collected early in the thirteenth century. In the domain of art she also claims a place, especially by her church music and by her mystery play. But the chief interest in Hildegard will always centre round her visions, mainly embodied in two long works, the *Liber Divinorum Operum Simplicis Hominis*, and above all in the *Scivias*, a name interpreted by her as *Scite vias Domini*.

The faith and creed of Hildegard were naturally those of a pious churchwoman of her age. But the especial and personal character of her religion was expressed in her

visions. The general background of these visions is clearly borrowed from Isaiah, Ezekiel, and the Apocalypse, and indeed with that latter work they have much in common both in form and feeling. Hildegard's writings contain many beautiful and moving passages, and it is unfortunate for the purpose of this essay that the literary value of those sections with which we are here concerned is comparatively small.³

THE WIESBADEN MS.

Manuscripts of Hildegard's various works are numerous, but the most interesting is perhaps the magnificently illuminated Parchment of the Scivias, which now reposes in the Nassauische Landesbibliothek at Wiesbaden. This beautiful volume of 235 folios contains numerous miniatures of the highest interest for the history of twelfth-century art. These have been recently studied by the late Dom Louis Baillet,⁴ of the Benedictine monastery of Osterhooft, and to his courtesy and learning the present writer owes a debt of gratitude. Baillet, after prolonged study, came to the conclusion that the manuscript was written in or near Bingen in the twelfth century, and probably towards the end of that period. Its miniatures help the reader greatly in the interpretation of the visions, and illustrate

³ A large and tedious literature has arisen around Hildegard and her works. The best recent lives of her are by Joseph May, München, 1911, and J. P. Schmelzeis, Freiburg im Breisgau, 1879. No critical edition of her writings has appeared. Many of her works, edited however mainly from inferior MSS., are to be found in vol. 197 of J. P. Migne's *Patrologia Latina*. A selection of her miscellaneous writings has been well edited by Cardinal J. B. Pitra in his *Analecta Hildegardis Opera*, Rome, 1882. A Bibliography, fairly complete up to its date, has been provided by A. von der Linde in his *Katalog der Wiesbadener Handschriften*, Wiesbaden, 1877.

⁴ Louis Baillet, 'Les Miniatures du Scivias de Sainte Hildegarde', in the *Monuments et Mémoires publiés par l'Académie des Inscriptions et Belles-Lettres*, tome XIX, Paris, 1912.

them often in the minutest and most unexpected details. In view of this and of the extreme difficulty of understanding many of the visions without these illustrations, the present writer has little doubt that this particular manuscript was supervised by Hildegard herself. As she originally set down the *Scivias* in 1141, there would have been plenty of time for the preparation of this remarkable manuscript before her death in 1180. There are illuminations accompanying all the visions, and at least three of them bear on our subject.

Hildegard herself could not fail to have been well acquainted with the Jews. Benjamin of Tudela, who visited Bingen between the years 1160 and 1173, and therefore during Hildegard's residence there, tells us that a congregation existed in the town at that time. Benjamin's visit, indeed, may well have taken place while our manuscript was actually in preparation. The Vision of the Synagogue is thus presumably in some degree a polemic against the local Jewish community.

THE VISION OF THE SYNAGOGUE (see Fig. 1)

In the various printed editions of the *Scivias* the text of this vision is exceedingly corrupt. We therefore give here the text in full, opening out the contractions but otherwise transcribing it:

- I. De Synagoga matre incarnationis DOMINI, filii dei. (fol. 35 r.)
- II. Verba salemonis.
- III. Verba Ysaiae prophetae.
- IV. De diuerso colore Synagoge.
- V. de cecitate eius et quod in corde abraham, in pectore

Et synagoga mater in car
 nationis hominum filii dei
 et verba solomonis
 et verba vsu pphete
 De diuerso colore synagoge
 De ecclesia eius et quod in
 corde abraham in pectore
 moyses inuenire eius reli
 qui pphete qd significet
 Quod magna ut turris ha
 bens circulum in capite si
 milem aurore
 et verba ezechielis
 Comparatio de samson et de
 saul et de dauid ad eandem



FIG. I. THE VISION OF THE SYNAGOGUE

Moyses. in uentre eius reli-
qui prophetae. quod significet.

VI. Quod magna ut turris. ha-
bens circulum in capite, si-
mitem aurorae.

VII. Uerba ezechielis. *Item*

VIII. Comparatio de samsone, et de
saul et de dauid ad eandem

Quinta Visio Prime

(fol. 35 v., col. a)

partis Incipit.

POST HAEC

uidi uelut quan-

dam muliebrem

imaginem, a uer-

tice usque ad umbili-

cum pallidam, et ab

umbilico usque ad pedes

nigram, et in pedibus san-

guineam, circa pedes

suos candidissimam et pu-

rissimam nubem habentem.

Oculos autem non habebat.

manus uero suas sub ascellas

suas posuerat. stans iuxta al-

tare quod est ante oculos dei:

sed ipsum non tangebatur. Et in cor-

de ipsius stabat abraham, et in pe-

ctore eius Moyses. Ac in uentre ip-

sus reliqui prophetae. singuli signa su-

a demonstrantes. et pulchritudinem

Ecclesiae ammirantes. Ipsa uero tante

magnitudinis apparuit. uelut ali-

qua turris alicuius ciuitatis est : habens in capite suo quasi circulum similem aurorae. Audiuque iterum uocem de celo dicentem michi. Antiquo populo austeritatem legis deus imposuit cum habrahe circumcisionem indixit. quam postea in gratiam suaui- (fol. 35 v., col. b) tatis conuertit per filium suum ueritatem euangelii credentibus dedit : ubi iugo legis sauciatos. oleo misericordiae delinivit. *De Sinagoga matre incarnationis filii dei*

- I. Quapropter uides uelut quandam muliebrem imaginem a uertice usque ad umbilicum pallidam : quae est Synagoga mater incarnationis filii dei existens. et ab initio surgentium filiorum suorum usque ad fortitudinem eorum secreta dei in obumbratione praeuidens. sed ea non pleniter aperiens. illa autem rutilans aurora quae aperte loquitur non existens, sed cum in multa ammiratione a longe intuens. et sic in canticis canticorum de ipsa dicens. *Verba Salemonis*
- II. Quae est ista quae ascendit per desertum deliciis affluens, et innixa super dilectum suum. Quod dicitur. Quae est hec noua nupta, quae in plurimis bonis operibus se eleuat per deserta paganorum, legalia praecepta sapientiae dei deserentium. et idola ado-

rantium, ascendens ad superna desideria deliciis donorum spiritus sancti habundans, ac sic studio anhelans et se ponens supra sponsum suum, scilicet filium dei. Haec enim est quae a filio dei dotata. in praeclaris uirtutibus iuget. (fol. 36r., col.a) et in riuiulis scriptorum habundat : Sed et eadem Synagoga, de filiis eiusdem nouae sponsae per multam ammirationem in seruo meo Ysaia propheta.

Isyas sic dicit. *Uerba Isaie prophetae.*

III. Qui sunt hi ut nubes uolant, et quasi columbae ad fenestras suas. Quod dicitur. Qui sunt isti qui in mentibus suis se abstrahentes de terrenis ac carnalibus concupiscentiis. pleno desiderio et plena deuotione ad superna uolant. et columbina simplicitate absque amaritudine fellis. sensus corporis sui muniunt et munimentum firmissime petrae quae unigenitus dei est. multo ardore bonarum uirtutum appetuntur. Hii enim sunt. qui propter supernum amorem terrena regna conculcant. et celestia querunt. Hec Synagoga ammirabatur de Ecclesia, quoniam se his uirtutibus ita munita (†) non cognouit sicut illam praeuidit. quia Ecclesia angelicis praesidiis circumdata est ne eam diabolus dilaniet et deiciat. cum Synagoga adeo deserta in uiciis iaceat.

IV. *de diuerso colore Sinagoge.*

Quapropter uides etiam ipsam ab
 umbilico usque ad pedes nigram
 quod est a fortitudine (fol. 36 r., col. b)

suae dilatationis usque ad consummati-
 onem suae extensionis in praeuaricatio-
 ne legis et in transgressione testamen-
 ti patrum suorum sordidam: quia mul-
 tis modis divina praecepta neglexit, et
 voluptatem carnis suae secuta est. Et in
 pedibus sanguinea, circa pedes suos
 candidissimam et purissimam nubem
 habet. quoniam in consummatione sua
 prophetam prophetarum occidit, ubi et ipsa
 lapsa corruit. in eadem tamen consum-
 matione lucidissima et perspicacissima
 fide in mentibus credentium surgente:
 quia ubi sinagoga consummationem
 accepit. Ecclesia surrexit: cum apostolica
 doctrina post mortem filii dei se per
 totum orbem terrarum dilatauit. *De*
Cecitate eius qui quod in corde eius abra-
ham. in pectore moises. in uentre eius
reliqui prophetae quod significant.

V. Sed eadem imago oculos non habet.

manus uero suas sub ascellas su-
 as ponit. quia sinagoga in veram lucem
 non aspexit cum unigenitum dei in despe-
 ctu habuit. unde et opera iusticiae sub te-
 dio pigriciae suae torporem a se non proici-
 ens tegit. sed ea velut non sint negligenter
 abscondit: stans iuxta altare quod est

ante oculos dei, sed ipsum non tangit. quoniam legem dei quam divino praecepto. et divina inspectione accepit. exterius quidem (fol. 36 v., nouit. sed eam interius non tetigit. quia col. a) eam potius abhorruit quam diligeret. sacrificia et incensum devotarum orationum deo offerre negligens. Sed in corde ipsius stat abraham. quoniam initium circumcisionis in sinagoga ipse fuit: et in pectore eius moyses. quia in praecordia hominum divinam *legem ille* attulit. ac in uentre ipsius reliqui prophetae. id est in institutione illa quae ipsi diuinitus tradita fuerat. inspectores diuinorum praeceptorum singuli signa sua demonstrantes et pulchritudinem Ecclesiae amirantes. quoniam ipsi miracula prophetiae suae in mirabilibus signis ostenderunt. et speciositatem generositatis nouae sponsae in multa ammiratione attendunt. *Quod magna ut turris. habens circulum in capite.* Ipsa uero tantae *similem aurore.* VI. magnitudinis apparet. uelut aliqua turris alicuius ciuitatis est: quia magnitudinem diuinorum praeceptorum suscipiens. municionem et defensionem nobilis et electae ciuitatis pronunciauit habens in capite suo circulum similem aurore. quia etiam in ortu suo miraculum incarnationis unigeniti dei persignauit. et claras uirtutes ac mi-

steria que secuntur praemonstrauit.
 Nam ipsa uelut in primo mane coro- (fol. 36 v.,
 nata fuit. cum diuina praecepta acce- col. b)
 pit! designans adam qui primum
 uissionem dei percepit. sed postea in trans-
 gressionem suam in mortem cecidit. Sic
 et iudei fecerunt. qui diuinam legem
 primitus susceperunt. sed deinde fili-
 um dei in incredulitate sua abiece-
 runt. Sed et sicut homo per mortem uni-
 geniti dei circa nouissimum tempus de
 perditione mortis ereptus est. *ita et Sy-
 nagoga ante nouissimum tempus de
 perdicione mortis ereptus est.* ita et si-
 nagoga ante nouissimum diem per di-
 uinam clementiam exercitata. incre-
 dulitatem deferet. et ad cognitionem
 dei ueraciter perueniet. Quid est hoc?
 Nonne aurora ante solem ascendit?
 Sed aurora recidit. et claritas solis per-
 manet. Quid est hoc? Uetus testamen-
 tum recessit. et ueritas euuangelium per-
 manet. quia quae antiqui in legali-
 bus obseruationibus carnaliter obser-
 uabant. Haec nouus populus in nouo te-
 stamento spiritaliter exercet. quoniam
 quod illi in carne ostenderunt. hoc
 isti in spiritu perficiunt. Nam circumcisio
 non periit. quia in baptismum transla-
 ta est. quoniam ut illi in uno membro sig-

- In MS. this passage is lined through.

nati sunt. sic et isti in omnibus membris suis. Unde antiqua praecepta non perierunt. quia in meliorem statum translata sunt. cum etiam in nouissimo tempore. sinagoga ad Ecclesiam se fideliter transferret. Nam o Sinagoga cum in multis iniquitatibus errares. ita quod cum baal et cum ceteris his similibus te pollueres. consuetudinem legis turpissimis moribus scindens et nuda in peccatis tuis iacens! feci ut ezechiel seruus meus loquitur dicens. *Verba ezechielis*
EXPANDI amictum meum super VII. te. et operui ignominiam tuam: et iuravi tibi. et ingressus sum pactum tecum. Quod dicitur. Ego. filius altissimi, in uoluntate patris mei extendi incarnationem meam. o sinagoga super te. id est pro salute tua, auferens peccata tua, que in multis obliuionibus operata es. et firmaui tibi remedium saluationis. ita quod itinera federis mei ad salutem tuam manifestaui cum ueram fidem per apostolicam doctrinam tibi aperui quatenus (?) praecepta mea obseruares. uelut mulier potestati mariti sui subiace-re debet. Nam asperitatem exterioris legis a te abstuli, et suauitatem spiritualis doctrinae tibi dedi. ac omnia Mysteria mea in spiritualibus

doctrinis per metipsum tibi
ostendi. Sed tu me iustum deseruisti.
et diabolo te iunxisti. *Comparatur* (fol. 37 r., col. b)
de Samsonē. et de Saul. et
de David. ad eandem rem.

Sed tu o homo intellige. scilicet
ut samsonem uxor ipsius
deseruit, ita quod lumine suo priuatus
est : sic et sinagoga filium dei deseruit
cum eum obdurata spreuit. et cum
doctrinam illius abiecit. Sed postquam
deinde capilli eius iam renati sunt
ita quod ecclesia dei confortata est.
idem filius dei in fortitudine sua
Synagogam deiecit. et natos illius exheredauit. cum etiam per paganos
deum ignorantes. in zelo dei contriti
sunt. Ipsa enim multis erroribus totius
confusionis et scismatis se subiecerat.
et cum preuaricationibus totius
iniquitatis se polluerat. Sed etiam quem-
admodum dauid uxorem suam quam
sibi primitus desponsauerat. et quae cum
alio uiro se polluerat tandem reuocauit.
ita etiam et filius dei Synagogam
que sibi primum in incarnatione sua
coniuincta erat. sed gratiam baptismi
deserens diabolum secuta fuerat.
tandem circa nouissimum tempus
recipiet : ubi ipsa errores infidelitatis
suas deferens. ad lumen veritatis redibit. Nam diabolus Syna-

gogam in cecitate illius rapuerat (fol. 37 v., col. a)
 et eam infidelitatem in multis erroribus
 tradiderat: nec hoc usque ad filiam perdi-
 cionis facere cessabit. qui dum in ex-
 altatione superbiae suae ceciderit velut
 saul in monte gelboe interfectus ex-
 spiravit. qui dauid de terra sua fuga-
 uerat. sicut etiam filius iniquitatis
 filium meum in electis suis Expellere
 tentabit. tunc idem filius meus an-
 ticristo deiecto. Synagogam ad ueram
 fidem reuocabit. sicut et dauid pri-
 mam uxorem suam post mortem saulis
 recepit: Cum in nouissimo tempore
 homines illum per quem decepti fue-
 rant. uictum uiderint. et ad uiam
 salutis cum multa festinatione re-
 current. Non autem decuit ut ue-
 ritas euangelii umbram legis praenun-
 ciaret. quoniam decet ut carnalia praecurrant
 et spiritalia subsequantur. quia etiam
 seruus dominum suum uenturum praedi-
 cit. et non dominus seruum in seruicio praecurrit.
 Ita et sinagoga in umbra sig-
 nificationis praecucurrit. et Ecclesia in lu-
 mine ueritatis subsecuta est. Unde
 quicumque scientiam in spiritu sancto et pen-
 nas in fide habet. iste admonitio-
 nem meam non transcendat. Sed eam
 in gustu animae suae amplectendo
 percipiat.

TRANSLATION OF THE VISION OF THE SYNAGOGUE

'I saw the appearance of a woman, light in colour from the head to the lap and black from the lap downward, but her feet were bloodstained, and a brilliant shining cloud was round about them. She was sightless, and her hands were folded under her armpits. And she stood hard by the altar which is before the eyes of God, yet she touched it not. In her heart stood Abraham, and in her bosom Moses, and in her belly were the other prophets, bearing each his own emblem, and all adoring the beauty of the Church. She appeared tall as a citadel, and round her head a wreath like to the dawn.

And I heard a voice from heaven speaking to me, saying: God placed the burden of His law on His ancient people when He ordained the circumcision unto Abraham, but in after days by the grace of His mercy He changed this when, through His son, He gave the truth of His gospel to those who believed on Him. Thus did He anoint with the oil of His mercy the chafing wounds caused by the yoke of His law.

(1) Concerning the Synagogue as mother of the Son of God in the flesh.

This figure which thou seest as a woman, pale from head to lap, is the Synagogue, the true mother of the incarnate Son of God. And from the first when her sons arose with such strength as was in them, she hath seen the secrets of God, but darkly and not in their fullness. Yet is she not that rosy dawn which was clearly prophesied, but she perceiveth it from afar. With great wonder she speaketh thus of herself in the Song of Songs: [8. 5]

(2) "Who is this that cometh up from the wilderness

overflowing with delights and leaning on her beloved." It is this new bride who raiseth herself by the multitude of her good works in the desert of unbelief, where men desiring laws rather than God's wisdom, do but worship idols. But, rising to noble desire, and overflowing with the joys of the gifts of the Holy Spirit and filled with zeal, she leaneth on her spouse, the Son of God. For she is His portion, and she is joined to Him in shining virtues, and she overfloweth with the rich springs of the Word.

(3) And in great wonder concerning the offspring of that union, the Synagogue speaketh thus by the mouth of Isaiah, my servant (Isa. 60. 8): "Who are these that fly as a cloud and as a dove to their windows." Who are those, that is, who abandoning earthly thoughts and carnal desires turn their whole yearning and devotion to heaven, and with the simplicity of doves and with no earthly bitterness they seek the fortress of the true rock, the only begotten Son, and aspire to good deeds with burning ardour. These are they who despise the kingdom of this world because of their love for the heavenly.

This Synagogue marvelleth concerning the Church thus armed with virtues, and findeth her not as she had foreseen. For the church is girt by guardian angels lest the devil injure her or cast her down, while the Synagogue lieth in sin, forsaken of God.

(4) Of the varied colour of the Synagogue.

She is black from lap to feet. This implieth that she is defiled in all her wide borders by her violation of the law and her transgression of the testament of her fathers, for she neglected the divine precepts to follow after the lusts of the flesh.

There is blood about her feet, yet are they surrounded

by a most pure and shining cloud. This is because in her consummation she slew the prophet of prophets, and with that crime she fell. But in that very act did the true faith arise in the souls of those who believed, for when the Synagogue accepted her consummation the Church arose, and after the death of the Son she spread herself by her apostolic doctrine throughout the world.

(5) Concerning the blindness of the figure.

The figure is sightless and hath folded arms, because the Synagogue seeth not the true light but holdeth the Only Begotten in contempt, and because, not putting away her torpor, she covereth her just works under the pall of her sloth and concealeth them as though they were not.

And she standeth by the altar but toucheth it not, for that she accepteth the Law of God in precept and theory and knoweth it from without; yet she attaineth not to its inward meaning, for, neglecting the true sacrifice of prayer, she rejecteth rather than pursueth it.

But Abraham is in her heart, for [through him] circumcision was first in the Synagogue; and Moses is in her bosom, for he brought the divine law to men's hearts; and the other prophets are in her belly, for that [law] descendeth by grace divine through her. These searchers after the divine precepts all display their proper emblems and adore the beauty of the Church, because they themselves, in the miracles of their prophecy, foretold her wonders, and they waited adoring the glory of the new espousal.

(6) She is tall as a tower and hath a circlet like the dawn round her head.

She appeareth tall as a citadel because, containing the might of the divine precepts, she advertiseth the provision and defence of the chosen city.

She hath around her head a circlet like the dawn, because in her origin she predestinated the miracle of the Incarnation and foretold those shining virtues and mysteries which followed. For she was, as it were, crowned by that first dawn when she accepted the divine precepts after the manner of Adam who first saw God. But afterwards she died in her sin, for so the Jews have done who did receive the first divine law, but then thrust away the Son in their unbelief, for man was delivered from perdition in the new age by the death of the Only Begotten One.

Thus the Synagogue, disciplined by divine mercy, did indeed before the new day put away unbelief, and did in truth attain to the knowledge of God. What portendeth this? Doth not the dawn appear before the sun? But the dawn fadeth and the light of day remaineth. What doth this portend? The old dispensation passeth, the new Evangel remaineth. For the ancients observed the Law after the flesh, but the new people worketh by the spirit according to the new dispensation. . . . For circumcision was not abrogated but was changed into baptism, for the one acts on a single member alone, but the other on all the members. And similarly the old laws have not perished but have been changed into better ones.

Wherefore in the fulfilment of years the Synagogue shall, believing, hand herself over to the church, for thou, O Synagogue, wanderest in many iniquities and pollutest thyself as though with Baal and his like, by cleaving to the observance of the law with its evil customs and by lying naked in thy sins.

(7) Do thou as commanded by my servant Ezekiel [16. 8]: "I spread my skirt over thee and covered thy shame. Yea, I swear unto thee and entered into a covenant

with thee", as though it were said, I, Son of the Most High, do cover thee, O Synagogue, by the will of my father with my Incarnation, that is for thy health, and I do bear the sins which thou hast worked in darkness.

And I have assured for thee the means of salvation, and have shown forth the path of my covenant when I revealed to thee the true faith by apostolic doctrine, so that thou shouldst observe my precepts, even as a woman should submit herself to the rule of her husband.

For I removed from thee the severity of the outward law, and gave thee the grace of spiritual doctrine, and I revealed to thee through myself all the mysteries of my spiritual doctrine, but thou hast forsaken me, thy lawful spouse, and joined thyself to the devil.

(8) Comparison under the same head of Samson, Saul, and David.

But understand this, O man! Just as when his wife betrayed Samson, his light was put out, so hath the Synagogue betrayed the Son of God, and unrepentantly despised Him and rejected His doctrine. But later, when His hair is grown again, as when the Church grew strong, this same Son of God in His might cast down the Synagogue and disinherited her children, so that the very heathen, ignorant of God, were moved by His anger.

But she lay in the errors of utter confusion and schism and defiled herself with the follies of sin. And so also David espoused a wife whom he at length reclaimed when she had defiled herself with another. Similarly the Son was at first through His Incarnation wedded to the Synagogue, but she, rejecting the grace of baptism, was lured by the devil. But at length, in the new age He will receive her when, abandoning her errors and unbelief, she will

return to the light of truth. For Satan ravished the Synagogue in her blindness, and betrayed her in her infidelity and error, and will not cease to act as a son of perdition.

But in the exaltation of his pride he will perish as Saul did, who drove David from his land, and was pierced through and died on Mount Gilboa. So also the son of iniquity will attempt to expel my Son; but my Son, having thrown down Antichrist, will call back the Synagogue to the true faith, as David took back his wife after Saul's death.

And so in the new age men will witness the overthrow of him by whom they were deceived and will rush to the paths of salvation. For it was not fitting that the truth of the Evangel should precede the gloom of the Law, but it was more fitting that the carnal should precede and the spiritual follow. For the servant predicteth the coming of the master, but the master goeth not before the servant. Thus the Synagogue came first in the shadow of symbolism, and the church followed in the full light of truth.

Wherefore whoever hath the knowledge of the Holy Spirit and the wings of faith in him, will not transgress my warning but will embrace it with joyful soul.'

THE MINIATURE OF THE SYNAGOGUE

The background is gold. The upper part of the figure as far as the waist is a pale purple, the lower part is dark blue or black. The feet are scarlet, and around them is a silver area. Across the forehead runs the circlet, which is gilt with a red tinge to signify the dawn. The eyes are fast closed, and the countenance downcast, and the hands folded impotently across the breast.

On the bosom of the figure is Moses. He is clad in a red cloak over a pale blue tunic. His countenance is raised. On his head he wears the blue conical cap that was the characteristic mark of the Jews in the Rhineland of the twelfth century. His left hand is concealed under his cloak, but in his right he holds the two tables of the Law, coloured dark red and arranged in their traditional form. This is probably one of the earliest manuscript representations of the double tables of the Law.⁵

Below the arms of the figure and placed in the 'epigastric' region can be seen Abraham, holding the circumcisional knife in his right hand. In front of and somewhat below him is presumably the figure of Aaron, distinguished by his white head-dress, from the front of which are suspended three small rings or jewels. The other prophets, of whom ten are represented, have no head coverings. They all look expectantly for the coming Messiah.

THE MARKET-PLACE (Fig. 2)

The blue conical Jewish hat appears twice more in the miniatures of the Wiesbaden MS., in Book II, Vision VII, folio 116 recto, and in Book III, Vision IV, folio 145 verso. The former scene represents a market-place. We will not detain the reader with Hildegard's allegorical interpretation, which is of no specifically Jewish interest, but her description of the scene we give below :

(Fig. 2) 'quasi forum ubi diuitiae hominum atque deliciae seculares et mercatus diuersarum rerum apparuerunt : ubi etiam quidam homines multa celeritate currentes.

⁵ The facts in connexion with the representation of the Decalogue in Art have been collected by Dr. Israel Abrahams in *Studies in Jewish Literature presented to Professor Kaufmann Kohler*. See also Cahier and Martin, *loc. cit.*



FIG. 3. THE COLUMN OF GOD'S WORD



nullum mercatum faciebant. quidam autem tepide euntes. et venditioni et emptioni ibi insistebant' (fol. 15 r., col. b). At the back of the picture are seen two merchants at their stalls with the characteristic Jewish hats. They are beckoning the two 'tepede euntes' purchasers, while upon their stalls are spread a somewhat meagre selection of 'deliciae seculares', among which gauntlets and girdles can be distinguished. Lower down in the forum can be seen a group of those 'quidam homines multa celeritate currentes', urged to even more rapid movement by a monk behind them.

It will be noted that, except for the hat, the costume of the Jews is similar to that of the other frequenters of the forum. There is no appearance of a special Jewish cast of countenance. Nor does Hildegard anywhere refer to the Jews as engaged in any form of finance, but only in trade.

THE COLUMN OF THE WORD OF GOD (Fig. 3)

The next miniature that we here consider is an allegorical representation of the tree or column of God's word (folio 145 verso, Book II, Vision IV, Fig. 3). On one side of the column, poised in the angle of its branches, sit various prophets. At the base is Abraham with the Jewish hat, then Moses, then Joshua, and in the highest ring a fourth figure in the typical hat exemplifying the remaining prophets. On the other side of the trunk peep out the heads of the apostles, martyrs, and virgins. On the summit, shaped like a Corinthian capital, is perched the Dove, surrounded by flames and bearing in its beak the true light symbolized by a gilded moon-shaped object.

The remaining picture that concerns us here (Fig. 4) is in the following folio (folio 146 recto, Fig. 4), where there is a very spirited miniature of a benign female figure, emblematic of the knowledge of God, surrounded by angels. On her right, a group of her followers crowd in upon her, while to her left her rebellious children dance out of the picture (Book II, Vision IV). Among these rebels the Jews are to be included, and the facial character of the foremost of the three is perhaps an attempt on the part of the artist to imply this. In any case the free drawing and movement of these figures is sufficiently remarkable in a twelfth-century MS. to justify the reproduction of the miniature.



FIG. 2. THE MARKET PLACE

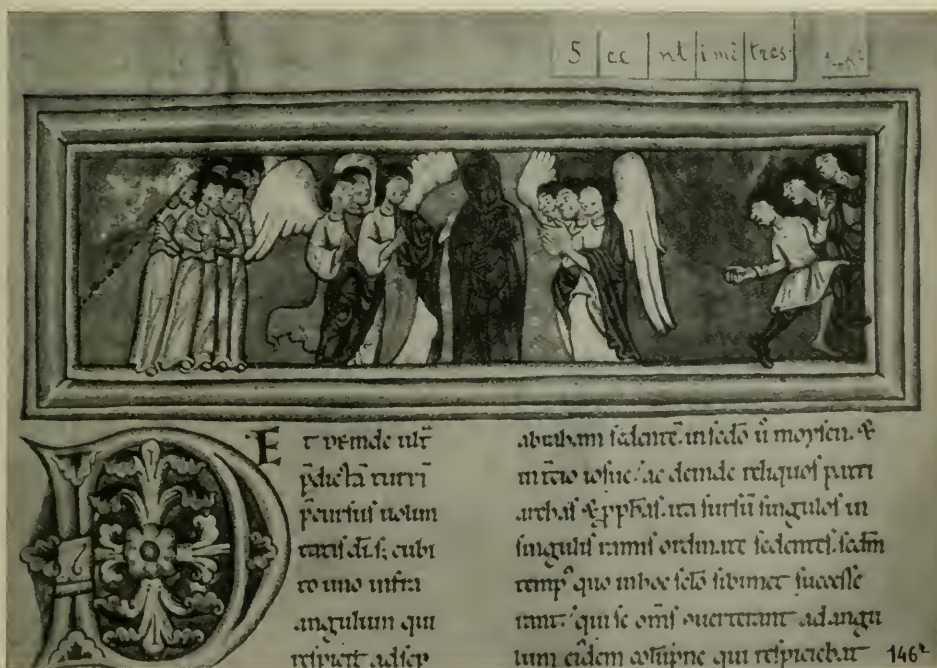
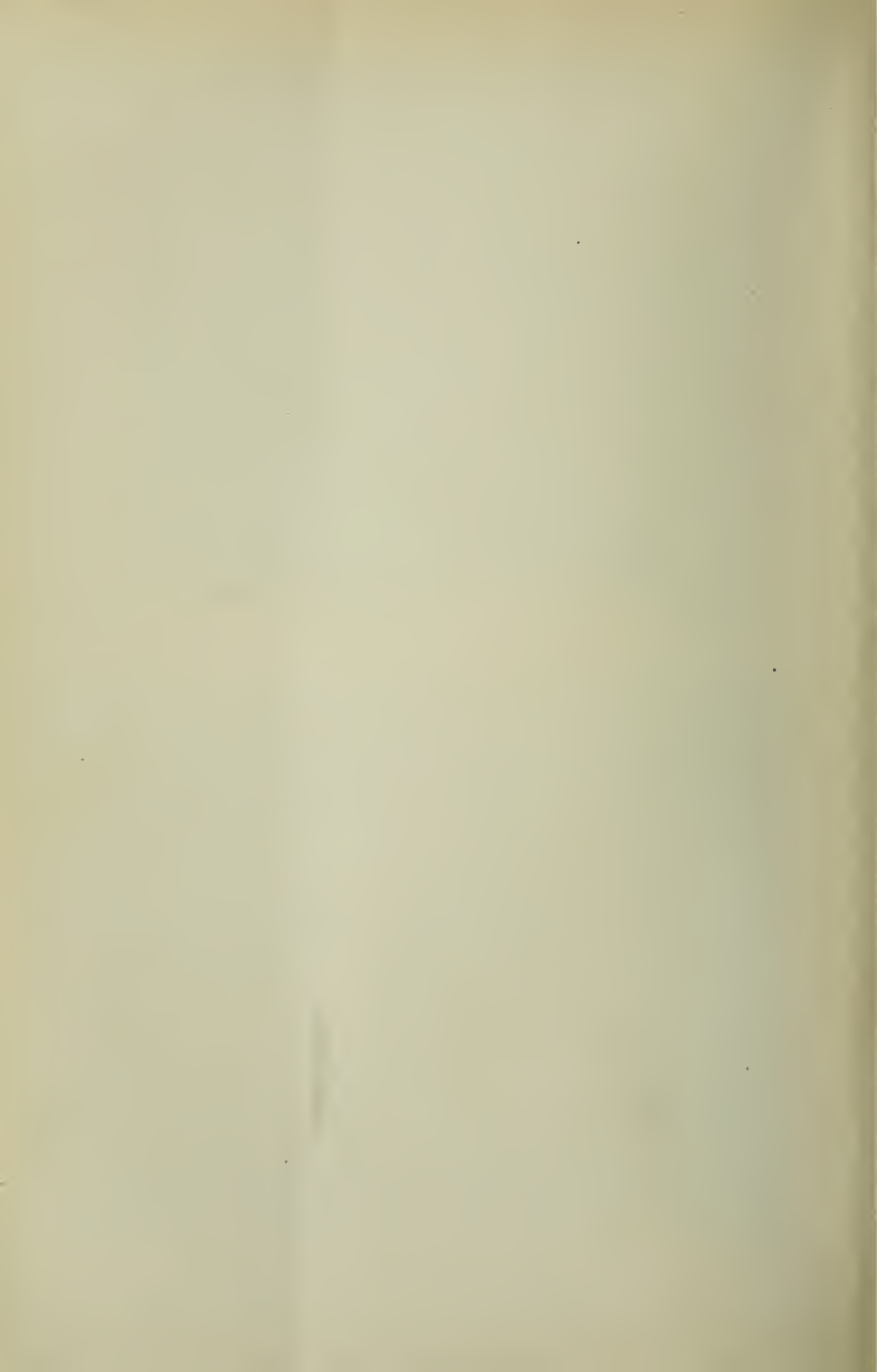


FIG. 4. THE REBELLIOUS AND THE FAITHFUL



THE ANCIENT HEBREW LAW OF HOMICIDE*

BY MAYER SULZBERGER, Philadelphia.

II

We have now reached the point when it is our business to examine minutely the texts bearing on the subject of homicide. One of them, however, the Exodus text, has in it elements of complication. All the other texts are simpler. Deuteronomy and Numbers treat of murder and of manslaughter, Joshua of manslaughter only, Leviticus of murder only. Exodus, however, which, like Deuteronomy and Numbers, treats both of murder and manslaughter, deals also with other aspects than are elsewhere considered.

We are brought (21. 20-1) face to face with the ugly slavery question, and learn that though the slave is no longer a mere chattel, he has not yet the full rights of a man, and the general law does not cover his case.

We find two other exceptions to be touched upon hereafter.

Our purpose in this course is to deal with the general law of homicide only. There may be an opportunity at some future time, to consider such important subjects as slavery and its history, as indeed there are many other questions in Hebrew law and polity worthy of study. For the present investigation, the portion of the Exodus texts which immediately concerns us is composed of three verses only (Exod. 21. 12-14).

They begin with the broad proposition that a man who kills another shall be put to death (*makkeh ish wa-met*,

* A course of five lectures delivered before the DROPSIE COLLEGE FOR HEBREW AND COGNATE LEARNING, March 31, April 3, 7, 10, and 14, 1913.

mot yumat), which is followed by a limitation or qualification of its generality, and this again by an emphatic statement or definition of the original proposition as qualified. The effect is to divide homicide into two degrees: the first, for which the death penalty is inexorably imposed, we may, for convenience, call murder; and the second, for which the death penalty is not imposed, may be called manslaughter.

As to the quality of the offence, there is no trace of the idea that it is a trespass merely. JHVH directs Moses to announce these *nishpaṭim* to the community, the *Bne-Israel* (20. 22; 21. 1), and the enforcement of the law is to be by it: I will appoint for *thee* the *maḳom* for the manslayer; *thou* shalt take the murderer from mine altar for death. Private interests are not alluded to. Tribunals are provided. When a Hebrew slave's term of service is to become perpetual, the master brings him to *Elohim* (21. 6); when vindictive damages are to be ascertained, the *pelilim* fix the amount (21. 22); a slave maimed by his master goes free, a right impossible to be enjoyed by a slave without public protection; in the only allowable case of *kofer* the sum is ascertained by a tribunal (21. 30); a bailee who has been robbed must appear before *Elohim* for judgment (22. 8 (9)), and railing at *Elohim* when one's case has been lost, is expressly forbidden (22. 27 (28)). In short, we are dealing here with the prosecution by the commonwealth of a high crime. As befits so serious a matter, the definitions are painfully minute.

If a man comes presumptuously (*yasid*) upon his neighbour to slay him craftily (*be-'ormah*), he is *makkeh-ish*, within the meaning of the twelfth verse, and must be put to death (21. 14). If he have not lain in wait (*lo šadah*),

but Elohim have delivered him into his hand (*ha-Elohim innah leyado*), he is not a *makkēh-ish* within the meaning of the twelfth verse.

The physical acts are the same in both cases, the evil effect is the same in both cases. This old Hebrew law, however, treats these facts as irrelevant in the determination of the perpetrator's degree of guilt and punishment. It looks in this regard solely to intent, to motive. Only the murderer forfeits his life, and this murderer is one who lies in wait, who comes presumptuously, with a set purpose. The words used are impressive. Lying in wait is called *ṣadah*, the term employed to describe the wily tactics of the hunter who pursues his game (Gen. 10. 9; 25. 27, 28; 27. 3, 5, 7, 33; Lev. 17. 13). There are other instances of the use of the same word to describe a man-hunt (1 Sam. 24. 11; Lam. 4. 18).

Coming presumptuously is called *yazid*, a word likewise used in other passages to express insolent defiance of law or right (Deut. 17. 12, 13; 18. 20, 22; Isa. 13. 11).

Coming with a set purpose is expressed by the word *be-'ormah*, meaning prudence, foresight (Prov. 1. 4; 8. 5, 12), or in a baser sense, craftiness (Joshua 9. 4).

The words describing the act of the man who is not guilty of murder, but of mere manslaughter, are equally striking. That he did not lie in wait (*lo ṣadah*) is naturally the first and most important element of his defence. The verse, however, goes further and says *ha-Elohim innah leyado* (*Elohim* has delivered him into his hand). The expression is one indicative of a state of general opinion which does not hesitate to acknowledge, in a very real sense, the government of God in human affairs. Under such circumstances it is not unnatural, it is even logical

to conclude, that when tragedy overtakes a man with stunning suddenness, unforeseen, unapprehended, it must be by the act of God. Whether the tragedy results from what we could call a pure accident, or from the sudden conflict of two impetuous and high-strung men, who never before had cause of quarrel, would make small difference in such a view—the man of that day saw God's hand equally in both cases.

This phrase, *ha-Elohim innah leyado*, would come to have a technical meaning among jurists, but would be so generally understood that a definition of it would not be thought of. Though we have no direct guidance to ascertain its precise meaning, we are not entirely without aid from other texts. There are at least two instances in which a form of this verb *anah* is used in a manner that throws light on our passage.

When Samson fell in love with a Philistine woman, he took the first step in a course of living which finally led to his destruction. His parents sought to dissuade him, but the Biblical writer makes the reflection that they knew not whereof they spoke, since it was JHVH's design to bring Samson into hostile collision (*to'anah*) with the Philistines who were then lording it over Israel (Judges 14. 4).

And that the idea of a quarrel is associated with the word is plain from the well-known story of the Syrian general Naaman. This distinguished man was afflicted with leprosy and could obtain no relief. A little Israelite handmaiden of his wife told her mistress that Elisha, the great prophet of Samaria, could cure him. The king hearing of this, insisted on Naaman's undertaking a journey to Samaria, at the same time giving him a personal letter

to the king of Israel, advising the latter that he had sent his favourite general to him to be cured.

The relations between the two powers were such that the king of Israel, when he read the letter, construed it to be a mere subterfuge. In his consternation he rent his clothes, and exclaimed: Am I *Elohim*, to kill or cure? He surely seeks to quarrel with me (*mit'anneh lu li*). Elisha, however, soon corrected the error by telling the king that Naaman's cure was not to be by the king, but by the prophet (2 Kings 5. 1-8).

In both these cases there is a subtle intimation that Divine wisdom at times foments a quarrel between persons not hostile to each other, in order to attain ends of justice which the narrow wisdom of human courts would be unable to reach.

To minds that hold these views, accidents are, of course, impossible. Everything is ordered by the *Elohim*, and man is responsible only for what he deliberately intends. Hence the term *ha-Elohim innah leyado* comprised a tolerably large range of happenings, from the death of a man by the mere slipping of his neighbour's axe from the helve, to the killing in hot blood.

The law of Exod. 21. 12-14 does not, however, stop with the mere definition of homicide. It points out what happened after a homicide had been committed. Whether it was murder or manslaughter, the perpetrator sought sanctuary; that is, he went to the altar and took hold of its horns.

The words are in the case of manslaughter: I will appoint thee a *maḥom*, whither he shall flee (or go) (21. 13); and in the case of murder: Thou shalt take him from mine altar (*mizbeah*) for death (21. 14).

That *maḳom* and *mizbeaḥ* refer to the same place there can be little doubt.

Before the conquest the country was divided into many little kingdoms, called *'arim* (cities), each of which had a capital city, which was the seat of cantonal government. At its gate sat the tribunals; in the portion devoted to the priests were the paraphernalia of worship. In our lectures on Hebrew Polity we have pointed out the example of Ophrah in the early days of Hebrew domination when the *zīkne ha-'ir* practised Canaanite rites and administered the law with, at least, a Canaanite infusion. The *maḳom* was the ecclesiastical section of the capital, and perhaps no better description of it can be given than that of Deut. 12, where the imperative command is given to destroy every one of them.

Ye shall utterly destroy all the *meḳomot*, wherein the nations which ye shall possess served their *Elohim*, upon the high mountains and upon the hills, and under every green tree. And ye shall overthrow their altars (*mizbeḥot*), and break their *maṣṣebot*, and burn their *asherim*, and hew down the *pesilim* of their *Elohim*, and destroy their names out of that *maḳom* (Deut. 12. 2, 3).

The elaborate furnishing of such a *maḳom* indicates that though there may have been humble shrines, popularly called *maḳom*, scattered through the country, yet the generally accepted *maḳom* was an important place in each canton, the capital city. Thus we read of *meḳom Schechem* (Gen. 12. 6), of Bethel, the *maḳom* where his (Abram's) tent had been (Gen. 13. 3); the *maḳom* of the *mizbeaḥ* (Gen. 13. 4), and again of Jacob's calling the name of the *maḳom* at Luz, Bethel (Gen. 28. 11-19).

Perhaps the best evidence is the fact that the Jerusalem

temple, in all its glory, is spoken of by Solomon as the *maḳom* (1 Kings 8. 29, 30, 35).

That in the days of the *zikhne ha-'ir* the law of every canton was administered in its own capital city cannot be doubted. A person charged with homicide would be tried there. If, however, there was good reason to avoid trial, he could run to sanctuary, and it may be that he was not limited in that respect, but could be protected if he seized hold of the altar in the *maḳom* of any of the *'arim* in the land.

This sanctuary granted protection even to the convicted criminal.

That the Hebrew law of homicide, as laid down in Exodus, was based on ancient Hebrew common law is probable. At all events, it represented the thought that wilful murder generates blood-guilt, not alone in the perpetrator, but in the whole community. Translated into modern phrase, this means that murder is a high crime against the state, and that all elements of private trespass and consequent damages, which would otherwise inhere in it, are submerged and annulled.

We have heretofore enlarged upon the formation of the Hebrew state out of the pre-Hebraic cantons (*'arim*), and have shown that the town-councillors (*zikhne ha-'ir*) insensibly fell into many of the ways of Canaanite religion and law. The formative period of the state began to show a decided progress towards national unity as early as the time of Samuel, but his administration and that of Saul were too disturbed to complete the establishment of a settled commonwealth. It was the genius of David which completed the work. His life, however, was largely taken up in securing his country against enemies from without

and from within. Much remained to be done. David was, above all, a warrior, and though he had magnificent plans for welding the state into a peaceful and harmonious whole, their fruition was not immediate. That he had conceived a mode of establishing the supremacy of federal law, and that it lacked efficiency, appears from an account in the second book of Samuel.

His son Absalom was ambitious to succeed to the throne. He was renowned for the beauty of his person (2 Sam. 14. 25); he made himself conspicuous by the mode of wearing his hair (2 Sam. 14. 26); he affected a state beyond the usual custom of royal princes (2 Sam. 15. 1). Above all, he was master of the arts of the demagogue. An incidental remark in the narrative telling of this quality, throws light on our subject. Absalom rose up early and stood beside the way of the gate; and it was so, that when any man that had a controversy (*rib*) came to the king for judgement (*la-mishpat*) Absalom hailed him: From which *'ir* art thou? And the answer came: Thy servant is from such and such a place. Then Absalom would say: No doubt your case is good and just, but then the king has appointed no one to hear you. O that he would appoint me *Shofet ba-areṣ*, so that any man that has a *rib* or *mishpat* might come to me. I would right him. All these men made obeisance to him, and he received them with warm marks of affection. So acted Absalom with all Israel that came to the king for *mishpat*, and, the historian adds, so stole Absalom the hearts of *anshe Israel*, the leading men of the nation.

The narrative proves that the administration of law in the several cantons had aroused discontent, and that a movement in favour of larger federal supervision was making

progress, or so supple a politician would not have become its chief advocate. And there are circumstances happening not much later which strongly confirm this view. David died about 970 B.C. One of the first acts of Solomon's reign was to institute a great fête at Gibeon. On that night he dreamed that he prayed JHVH to give him a *leb shomea'*, a mind to hear and to judge (*lishpot*) the people, to discern between the right and the wrong (1 Kings 3. 9), and that JHVH granted his prayer to the full 'so that there was none like thee before nor will be hereafter' (3. 12).

And by way of illustration, there follows the story of the two women and Solomon's wise judgement on their dispute, and all Israel believed that the wisdom of God was in him to administer justice (*la-'asot mishpat*) (3. 28).

That he proceeded at once to reorganize the government, so as to bring the central power to bear on each corner of the state, appears from 1 Kings 4. And as a result we are told that Judah and Israel dwelt safely, every man under his vine and under his fig-tree, from Dan even to Beersheba (1 Kings 5. 5 (4. 25)).

In the pursuit of his great federal policy, he planned to make Jerusalem a point of attraction for every inhabitant of the country, and for strangers from abroad. Especially prominent was the group of great buildings of which the Temple was the most striking and impressive. One notable feature of his palace was the *ulam ha-mishpat*, a porch for the throne where he sat as the chief judge of the kingdom (1 Kings 7. 7). Into the Temple was introduced the sacrosanct *Shem*, the Ark of the Covenant, the visible symbol of Divine Justice on earth (1 Kings 8. 21).

And Solomon, by his prayer, indicated that thereafter

its high function of administering justice by oracle would cease, and that ordinary courts would take its place, the judges whereof would impose an oath (*alah*) upon a man charged with injuring his neighbour, invoking God so to order that the guilty might be convicted (*le-harshia' rasha'*) and receive his deserts, and the innocent be acquitted (*le-hašdik šaddik*) as is meet (1 Kings 8. 32).

These facts show the circumstances which led to Solomon's being heralded in legend as the great juridical genius of Israel. There is in his very name a hint that he was determined to put an end, once for all, not only to external wars, but to domestic disorders and feuds. Though the boy was named Jedidiah, probably to conciliate the turbulent Benjamite element in the state, by the adoption of the cognomen of their eponymous ancestor (Deut. 33. 12), yet his father, seasoned old warrior that he was, had come to see that peace was the highest ideal of a prosperous state. And so, as his end drew near, he charged the prince to build the Temple, which privilege, though eagerly sought, had been denied him, because he had delighted in bloodshed and grown great on it, and it had been reserved for a man who would give the country repose (*ish menuḥah*), in whose reign Israel should have peace (*shalom*) and quiet (*sheket*) (1 Chron. 22. 6-9).

Solomon (*Shelomo*) was an appropriate cognomen for such a man, and it was David who bestowed it on him (2 Sam. 12. 24; 1 Chron. 22. 9).

It is probable that the first effort of the federal government was to correct the cantonal government's indifference to the offence of *sarah*, which was the active and open advocacy of Baal as against JHVH. In *Ancient Hebrew Polity* (pp. 51-61) I have shown the transfer of jurisdiction

over this offence from the *zikne ha-'ir* to the Federal High Court, there called the *'Am ha-areš*. This was a measure to protect the state against direct assault on the established religion which was its foundation.

Security of life everywhere within the kingdom was a matter of no less importance. To appreciate the gravity of the question thus presented, we must try to understand the pre-Hebraic Canaanite law of homicide.

The common notion that it was in the pure blood-feud or vendetta stage is unsupported by adequate evidence. In placing before you the sources of our information in the first lecture, you will remember that eleven provisions of the law of Hammurabi (*circa* 2250 B. C.) were presented, being the only articles of that Code in any wise bearing on the subject of homicide. They show that at the time of the promulgation of that Code, the Babylonian state had not yet assumed jurisdiction over homicide. The inference is that the law of blood-feud or vendetta, in some form, was then in force. Blood-feud or vendetta is a form of true law. Before a state is fully organized, certain functions which ought to be exercised by it are left to the control of subordinate organizations within it, such as families, clans, or guilds. Homicide is one of the subjects with which early governments are not eager to deal.

During such preparatory stages of a state's growth, the vendetta is the only safeguard of human life. It protects society. Far from being an enemy of the nascent state, it is an effective aid to its development. So soon, however, as the proper stage has been reached, the vendetta law is at first modified, and afterwards, when the state has assumed the whole jurisdiction over cases of homicide, it is totally repealed and destroyed. Sporadic survivals here and there

are in the nature of conscious crime, and in no wise impair the force of these general rules.

The result as here sketched is inevitable. State laws against homicide raise questions of fact and law which cannot be determined otherwise than by regularly constituted tribunals.

Vendetta law, on the other hand, is plain and simple, and needs to make no curious inquiry into circumstances or motives. A member of clan A has killed a member of clan B. The latter must retaliate in kind; for, if there were no such redress, the injured clan would become the mark for hostile assault from all quarters.

That state laws which punish a man for his own crime only, cannot co-exist with a system which punishes without regard to the question whether the victim is innocent or guilty, is too obvious for argument.

The reticence of the Hammurabi Code on the subject of homicide does not forbid the conclusion that the vendetta law, pure and simple, was no longer dominant; that though tolerated to a degree, it had undergone modification.

It needs but little reflection to understand that the vendetta law is, in effect, a perpetual civil war between constituent elements of a state, and that its unbridled practice can have no other result than the destruction of the state.

The Hammurabi Code presents indications that it realized this truth, and though it did not deal with homicide directly, it ordered the several corporate elements of the state to accept *wergild* or money satisfaction for certain kinds of homicide.

One who killed another in a quarrel paid to the bereaved family or clan or guild a certain value in silver, and there the matter ended.

That in course of time this principle of *vergild* also extended to cases of wilful murder is probable. It is not to be believed that great states like Babylonia and Assyria failed to change their laws from time to time. Reverence paid to ancient codes does not mean that they retain their pristine usefulness, or that no part of them has become obsolete.

We may well believe that when the Hebrews entered Canaan, a thousand years after the promulgation of the Hammurabi Code, the latter had been essentially changed, and that the vendetta law for murder had been materially modified. Be that as it may, there is no evidence that unmodified vendetta law then ruled in Canaan. Everywhere there were ordered little kingdoms whose existence would have been daily imperilled from within had such licence been tolerated.

The evidence of the Hebrew legislation on the subject confirms the view that the Canaanite law of homicide was vendetta law as modified by *vergild* (*kofer*). While the kings of the various 'arim did not make homicide an affair of the state, they nevertheless preserved the peace of the 'ir by permitting the tribunals to assess the proper amount of *kofer*.

This was the state of the law when the Hebrews entered Canaan, and the whole evidence tends to show that the *zikkne ha-'ir* of the various cantons failed to administer the Hebrew law whose letter and spirit were hostile to the native practice of *kofer*.

There are hints in the Biblical writings which seem to attest the existence of the practice of *kofer*, and to indicate that the *maḥom* priests were the intermediaries who arranged terms between the parties.

It will be remembered that Eli's sons and Samuel's sons were, in the popular mind, guilty of abusing their high positions for their own material advantage. After the coronation of Saul, Samuel, smarting under the national repudiation implied by the establishment of the monarchy, delivered a farewell address, in which, with conscious integrity, he challenged any man to point to any questionable transaction in his long public career. One of the acts he repudiates is the taking of *kofer* that blinds the eyes (1 Sam. 12. 1-5).

The Authorized Version renders it *bribe*, evidently under prepossession of the idea that Samuel was a *shofet* in the later sense, a judge of a law-court, and without reflecting that Samuel was the *Kohen's* acolyte; that as a child he ministered before JHVH, girded with a linen *ephod* (1 Sam. 2. 18; 3. 1); that he was to be a *Kohen ne'eman* to replace Eli's sons (2. 35), and that all Israel recognized him as *ne'eman*, as a *nabi* of JHVH (3. 20).

That the sons of Eli, among other things, were charged with profiting by *kofer*, may be fairly assumed, and hence Samuel's defence probably alludes to the well-established custom of the *maḳom* priest to assist in the negotiation between the *roṣeah* and the family *go'el*.

Moreover, the word *kofer* occurs thirteen times, and the Authorized Version renders it *ransom* in eleven of them. The only other exception is in Amos 5. 12 where it also renders *bribe*.

The proper word for *bribe* is *shoḥad*, which means gift, since the ancient Hebrews believed that a gift to a public official by a person who had or was likely to have an interest in a matter before him, was a bribe. It occurs twenty-one times, and in every instance the odious feature

appears that it is designed to curry favour with a person in power. The guilty (*rasha'*), says Prov. 17. 23, proffers *shohad* to avert justice, and Micah (3. 11) describes judicial depravity with the bitter words: They judge for *shohad*.

While *shohad* means giving something for a consideration which no man will avow, *kofer* conveys the idea of a valuable consideration. The money is due as ransom, solace or atonement for an injury committed. It is the *vergild* or damages paid by one who has killed another to the head of the decedent's family or clan, and received by the latter in satisfaction and discharge of all claims and animosities.

However inveterate a custom like *kofer* may have been, the idea that the priests would abuse their functions in relation to it, would be sure to grow and to engender bitterness. Popular hatred would not nicely discriminate between *shohad* and the profits of *kofer*, and in fact we find that Samuel's sons were charged outright with taking *shohad* (1 Sam. 8. 3).

The one other instance in which *kofer* is rendered *bribe* throws some light on the inveteracy of custom. That the Northern Kingdom was slower than the Southern in purifying the Hebrew law of Canaanite admixture, is highly probable. Amos (about 750 B.C.) visited the Northern Kingdom, apparently for the purpose of effecting some reforms in that respect. That his utterances attracted attention appears from the fact that he was directed to leave the country, the priest of Bethel reporting to the king of Israel that the land was not able to bear all his words (Amos 7. 10, 12). Though not satisfied with conditions in his own Judah, Amos seems to have been horrified by what he saw in Israel. He comments par-

ticularly on evasions of the *Torah*, and gives particulars. They sell persons into slavery who are not liable to this punishment (*ṣaddik*) (2. 6); they violate certain purity statutes (2. 7); they ignore the law (Deut. 24. 12, 13), requiring that a pledged garment be put in the pledger's possession at night (2. 8); they break the law (Num. 6. 3), forbidding strong drink to Nazarites (2. 12); they mock those who pronounce judgements according to the *Torah* (5. 10); they convict the innocent (*ṣaddik*), they take *kofer* (5. 12). He implores them to establish *mishpat* (the law) in the *sha'ar* (courts) (5. 15).

In this powerful invective he charges that taking *kofer*, though forbidden by the *Torah*, is still practised, and puts the conviction of the innocent as an antithesis to taking *kofer*, which is, in effect, letting off with a fine some who should answer with their lives.

Vendetta law, modified by *kofer*, is perhaps the least desirable of all, when a state is increasing in wealth and power. Violence by turbulent chieftains is doubtless a serious evil in the state, but bloodshed that may be paid for in money by peaceful, wealthy citizens is much more shocking.

The time had come when *kofer* for murder had become inconsistent with the safety of the state, and Solomon determined to abolish it, and to enforce the Exodus statute.

There is nothing in the records to show that the *zikhne ha-'ir* were deprived of their function. That federal legates were sent to sit with them, would appear to be certain from the *zikhne ha-'ir* law of Deut. 21. 1-9, which prescribes that in murder cases where the perpetrator could not be discovered the *Kohanim* (*bne-Levi*) were to be present, and that their duty was to pronounce the law in

every case, civil and criminal (*kol rib we kol nega'*) (21. 5). The broad statement of their powers seems intended to negative any inference that their duty was limited to the particular kind of case under discussion.

There is, moreover, no hint that the execution of any judgement they might pronounce was to be in any new mode. Under the vendetta-*kofet* law, the judgement doubtless was that the perpetrator of the homicide was to pay to the *go'el* of the bereaved family a certain amount specified by the *zikne ha-'ir*, failing which payment the *go'el* was entitled to put him to death. Motive and circumstances were not inquired into. A killing by accident was not differentiated from deliberate assassination. The great change to be effected by the new federal movement was that murder was to be carefully distinguished from manslaughter, and that neither *kofet* nor any other defence or device could save a murderer from death. A fatal blow was dealt the old pagan custom of sanctuary. It was no longer to protect the murderer. Thou shalt take him from mine altar for death (Exod. 21. 14).

Concerning manslaughter the matter is not so clear. As the manslayer was still entitled to the privilege of sanctuary, and as nothing is said about subsequent proceedings, the inference is that *kofet* for manslaughter was tolerated. This conclusion is strengthened by the law respecting the goring ox. If the master knew of his vicious habit, and allowed him to go at large, and he killed a person, this was held to be constructive murder by the master, and the punishment denounced was death: 'the ox shall be stoned, and his owner also shall be put to death' (21. 29). In this case, however, *kofet* is expressly allowed (21. 30). As constructive murder is an offence of a higher

grade than manslaughter, the probability that *kofer* was allowable in the latter is heightened.

It may be well worth while to pause here for a moment for the purpose of comparing the Hebrew law's view of homicide with that of our modern law.

The Hebrews noted cases of voluntary and of involuntary manslaughter just as we do. They did not, however, hit upon any line of division between the two. Our common law declares voluntary manslaughter to be the unlawful killing of another, without malice, on sudden quarrel, or in heat of passion. Involuntary manslaughter is, where a man doing an unlawful act, not amounting to felony, by accident kills another.

We also have excusable homicide, where a man doing a lawful act, without any intention to hurt, by accident kills another; as, for instance, where a man is hunting in a park, and unintentionally kills a person concealed. This we call homicide by misadventure.

The Hebrew law put under one and the same head of manslaughter, the voluntary, the involuntary, and the excusable homicide of our common law. They recognized an element of supernatural influence in them all equally, and punished them alike.

To this general classification there were but two exceptions: the constructive homicide by the goring ox, which we have just described, and the act of men, who in a quarrel with each other, accidentally hurt a gravid woman. The provision is obscure and leads to the suspicion of an injury to the text. It nowhere speaks of the perpetrator as killing the woman, or of the victim as dying. It names two kinds of result to the woman, one where there is no *ason*, and the other where there is *ason*. The term *ason* is defined as

meaning mischief, evil, harm (Brown-Driver, p. 62). That miscarriage should be described as no mischief (*zelo . . . ason*), and that death should be described as mischief (*ason*), is certainly peculiar. The one appears to understate the fact, the other to overstrain the word. We have before us a case which was evidently part of the Canaanite common law. The Code of Hammurabi, as we have seen, has provisions on the subject (Sections 209-14). It distinguishes the victims into three classes: gentleman's daughter, poor man's daughter, and gentleman's female slave. It divides the effect of the injury into two classes: miscarriage and death. For miscarriage the damages are ten shekels, five shekels, and two shekels, according to the social rank of the woman; for death, the penalty, if the victim be a gentleman's daughter, is the death of the perpetrator's daughter; if she be of the other ranks, a half-mina of silver, and a third of a mina of silver, respectively.

The Babylonian law treated the miscarriage itself as a punishable mischief, while the Hebrew law in its present form, declares it to be no mischief, but nevertheless imposes punitive damages (*'anosh ye'anesh*). The probability would seem to be that in the case of accidental death like this, the general rule prevailed that the death penalty could not be imposed for homicide, unless it was committed with malice aforethought. The term *'anosh ye'anesh* would then cover the whole case, *ason* or no *ason*. The *pelilim* would make a just appraisal of the damage suffered by the woman, if she lived, or by her husband in consequence of her death. This would, in effect, take the case out of the list of criminal acts and reduce it to a civil trespass, for which damages were recoverable—a conclusion with which our modern law might readily concur (Exod. 21. 22-5).

That the first effort of the federal government to revolutionize the ancient practice was not very successful, is easily inferable from the fact that important amendments to the law were soon made. These are incorporated in the Deuteronomy statute, and the nature of the changes leads to the suspicion that the taking of *kofer* for murder was still practised. The family *go'el*, who, by immemorial custom, was entrusted with the death-warrant, did not take the murderer from the altar, and it is to be feared that the *zikhne ha-'ir* and the *makom* priest connived at this breach of the federal law. The habit of collecting money damages was deemed too valuable a privilege to abandon for the sake of abstract justice or large state policy.

The new remedies introduced by the Deuteronomy statute were:

1st. The positive assumption by the state of exclusive jurisdiction over all homicide cases, or, in the words of the text, the acknowledgement of national blood-guilt (*dam*) for homicide.

2nd. The abolishment of the ancient right of the family *go'el* to receive the warrant of execution from the *zikhne ha-'ir*, and the compulsory duty of the latter to entrust it to a newly created federal officer for each canton—the *go'el ha-dam*—who is not the family *go'el*.

3rd. The abolishment of sanctuary for homicide and the exclusion of the *makom* priests from any concern therein.

4th. The establishment of three judicial districts, and the setting apart of one city in each to which every perpetrator of a homicide must go.

5th. The total abolishment of *kofer* for manslaughter, and the substitution therefor of internment in the separated city, as punishment for the crime.

6th. A marked change in the law of evidence, by which the testimony of one witness only became incompetent to convict.

As regards the first and second of these points, it is to be remarked that the name *go'el ha-dam* was the mere adaptation of a word in common use: *go'el*. The *go'el* was that member of the family who, when it lost its head, was the next friend; a kind of sublimated executor and guardian, who looked after the interests of his kinsmen in trouble. And now it was the state whose new measures and principles avowed that it had incurred blood-guilt (*dam, damim*); that an evil fate threatened the country, unless this blood-guilt was redeemed or removed.

A *go'el* or redeemer was needed, and thus the *go'el ha-dam*, a being never heard of before, was created. He was the state's redeemer from blood-guilt, not the avenger of the victim's blood. Had he been the latter, he would have been *nokem ha-dam*.

The confusion that exists has arisen out of the double meaning of *dam*, blood and blood-guilt, accompanied by an exaggerated notion of ancient views concerning the sanctity of blood. The Hebrews forbade the drinking of blood, because nations with whom they came in contact practised this habit, in association with other habits and rites which the Hebrews deemed demoralizing. *Dam* means blood. It also means blood-guilt, and even in this sense it means two kinds of blood-guilt—the primary blood-guilt of the perpetrator, and the secondary blood-guilt of the community which the latter incurs by its failure to prevent the killing, an error which it must expiate, either by punishing the slayer, or, if he remains undiscoverable, then by formal legal ceremony. It is with this secondary

blood-guilt, the communal blood-guilt, that our investigations are more immediately concerned. Its name is sometimes *dam*, sometimes *damim*.

We have, in our first lecture, referred to the striking passage of Genesis (9. 5), which refers the origin of this keen sense of communal responsibility to the direct instruction of Noah by *Elohim*, at the very beginning of the new world after the Deluge.

The same view is expressed, or implied, in other passages :

Ye shall not pollute the land wherein ye are ; for blood-guilt (*ha-dam*) defileth the land, and the land cannot be cleansed (*yekuppar*) from the guilt of blood (*la-dam*) shed therein, save by the blood of him that shed it. Defile not therefore the land which ye shall inhabit, wherein I dwell (Num. 35. 33, 34).

That *dam naḳi* be not shed in thy land, which JHVH, thy *Elohim*, giveth thee for an inheritance, and so blood-guilt (*damim*) be upon thee (Deut. 19. 10).

Jeremiah expresses the same idea :

If ye kill me, ye bring the guilt for innocent blood (*dam-naḳi*) on yourselves, on this city, and on its inhabitants (Jer. 26. 15).

And Joel does the same :

I will cleanse their blood-guilt (*we-niḳḳeti damam*) that I have not cleansed ; for JHVH dwelleth in Zion (Joel 4 (3). 21).

We have, moreover, the impressive ceremony of communal purgation from this kind of blood-guilt in Deut. 21. 1-9.

By the force and operation of the new federal policy the realization of communal responsibility for murder

became much keener in the Hebrew state than it is in our modern conditions. They also felt a more urgent responsibility for their own share in any transaction which might result in loss of life, as is seen in this provision :

When thou buildest a new house, then thou shalt make a battlement for thy roof, that thou bring not blood-guilt (*damim*) upon thine house if any man fall from thence (Deut. 22. 8).

This extreme sensitiveness concerning blood-guilt was not due to the fear of savage reprisal, as has been commonly thought. The instance just given is clearly an ancient urban regulation, expressing developed feelings and not primitive passions.

So insistent did this notion of blood-guilt become that it cropped out everywhere. If the law proclaimed capital punishment for an offence, it conceived blood-guilt as somehow inseparable even from a legal execution, and got rid of it by ascribing the blood-guilt to the convicted defendant himself, whose bad conduct compelled the state to slay him. The terms are: *damaw bo*, the blood-guilt for him is upon himself (Lev. 20. 9); *demchem bam*, the blood-guilt for them is upon themselves (Lev. 20. 11, 12, 13, 16, 27; 1 Kings 2. 33).

A community so impressed with the awfulness of blood-guilt will do all in its power to avoid it. There is need for untiring vigilance to ward it off. The functionary whose office it is to see to the community's expiation, may well be called the community's next friend. And for this position there is no Hebrew word more apt than *go'el ha-dam*, the next friend of the community in warding off its blood-guilt.

According to this view the word *go'el* expresses a direct relation with the community, and the word *ha-dam* a con-

dition of the community which is to be protected by that relation. The common notion is that the direct relation of the *go'el ha-dam* is with the criminal. *Go'el* is held to be the *avenger* who smites the criminal, and *ha-dam* is not the blood-guilt of the community, but the blood of the victim. The *go'el ha-dam* would thus be the avenger of the victim's blood. The contrast is sharp. On the one hand the community's friend and saviour; on the other, the criminal's vengeful enemy.

In support of the former view, it may be said that no instance can be found where *go'el* does not mean one who has a friendly function to perform, a function which has a sustaining effect on the person for whom he acts, whose *go'el* he is.

When one exhibits his friendliness by injuring his client's adversary, he is no longer *go'el*, but *no'kem*, avenger.

Isa. 63. 4 brings this out clearly. JHVH is represented as going forth to take vengeance on Edom for wrongs it has perpetrated against His people Israel, and as declaring:

The day of vengeance (*yom na'am*) (against Edom) is in my heart.

The year of my redeemed (*shenat ge'ulai*) (Israel) is come. And in ver. 8 this relation between JHVH and Israel is expressed by the parallel term *moshia'* (saviour), while in ver. 9 both terms are used together—*hoshi'am* and *ge'alam*.

That *go'el* is uniformly used as here contended, let numerous instances attest:

Jacob invokes for Joseph's sons the blessing of his protecting angel (*ha-mal'ak ha-go'el*) (Gen. 48. 16).

JHVH promises to redeem Israel (*we-ga'alti*) (Exod.

6. 6), and in the song of Moses is worshipped for having done it (*ga'alta*) (Exod. 15. 13).

In Lev. 25, the redemption of the former owner of land, sold by him, is spoken of, and it has the technical name of *ge'ullah* (25. 24), and his act in so redeeming is called *yig'al* (25. 33).

If he be too poor to redeem, his next of kin shall do so for him (*ga'al*), and this friendly redeemer is the *go'alo ha-karob elaw* (25. 25).

Among the list of those who shall act as *go'el* are the uncle, the uncle's son, or indeed any near kinsman (*she'er besaro*) (25. 49).

When Zimri exterminated the whole house of king Baasha of Israel, he left none of his *go'alim* or *re'im* alive (1 Kings 16. 11).

Jeremiah uses the word in the same sense of redemption—*ge'ullah* (Jer. 32. 7, 8).

He (Boaz) is one of our near relatives, of our *go'alim* (Ruth 2. 20 ; 3. 9, 12, 13 ; 4. 1-10 ; 4. 14).

Thus it is seen that the word *go'el* presents only the idea of service rendered to the friend by an act making directly, and not indirectly, for his benefit. It is true that such a *go'el* might render a kind of doubtful indirect service to his friend by hurting the latter's enemy. When such is the case, the word *ga'al* does not present itself to the Hebrew mind as describing the act. As we have seen from Isa. 63. 4, it is *naḥam* which describes the vengeful aspect of an act, because, however friendly it may be to the beneficiary, it is hurtful to the victim. Indeed, it is the only true Hebrew word for vengeance, though there may have been a dialectal variation of it (*naḥam*) which Isaiah uses in alliterative parallelism.

JHVH, the *abir* of Israel, says :

Oh, I will ease me (*cnaḥem*) of mine adversaries, and
avenge me (*innaḥemah*) of mine enemies (Isa. 1. 24).

And he uses the word *naḥam* in the same sense frequently
(34. 8 ; 35. 4 ; 47. 3 ; 59. 17 ; 61. 2).

Whoever slayeth Cain, vengeance shall be taken on him
(*yukḥam*) (he shall be punished) sevenfold (Gen. 4. 15 ; 4. 24).

Thou shalt not avenge (*tiḥḥom*) nor bear grudge (*tiṭtor*)
(Lev. 19. 18).

Avenge (*uḥom niḥmat*) the Bne-Israel of the Midianites
(Num. 31. 2, 3).

Mine is punishment (*naḥam*) and recompense (*shillem*)
(Deut. 32. 35).

If I whet my glittering sword and mine hand take hold
on judgement, I will punish (*naḥam*) mine enemies, and
will recompense (*ashallem*) them that hate me (Deut. 32, 41).

And the sun stood still

And the moon stayed

Until the people had avenged them (*'ad yiḥḥom goy*) of
their enemies (Joshua 10. 13).

Samson shouted at the Philistines: *Niḥḥamti bakem* (I
will be avenged on you) (Judges 15. 7 ; 16. 28).

It is God who vouchsafed me vengeance (*uḥamot*),

And subjected peoples to me (2 Sam. 22. 48).

Jeremiah uses the word frequently (11. 20 ; 20. 10, 12 ;
46. 10 ; 50. 28 ; 51. 6, 36), as does Ezekiel (24. 8 ; 25. 12,
14, 15, 17). Nahum does the like (1. 2), as does Proverbs
(6. 34).

Perhaps the most impressive use of the word *naḥam*
in this connexion is found in passages in which it is
employed to denote vengeance against murderers.

He will avenge (*yiḥḥom*) the blood (*dam*) of his servants

And inflict vengeance (*naḳam*) on his adversaries (Deut. 32. 43).

I will avenge the blood (*we-niḳḳamti damim*) of my servants, the prophets, and the blood (*damim*) of all the servants of JHVH at the hand of Jezebel (2 Kings 9. 7).

In law, too, the word *naḳam* is used technically to denote punishment of a severe kind (Exod. 21. 20, 21).

The examples given fairly justify the conclusion that the *go'el ha-dam* was the public executioner, who, by fulfilling the death-sentence against murderers, relieved the community of its secondary blood-guilt.

That the term should in time become disagreeable, and even odious, is inevitable. In our own language there is a sense of shudder in the word executioner, which was even more lively in its predecessor 'headsman'.

We have now reached a point at which we may pause. The old Hebrew law of Exodus has been analysed, the opposition to its enforcement explained. The stern justice of the state, under the guidance of the great king, has entered into a death-struggle with the crude *kofer*-justice of bygone ages. *Maḳom* priests and *zikne ha-'ir* are, some openly, some covertly, satisfied with the old and alarmed at the new. The vigorous blow at sanctuary, constricting its jurisdiction and limiting its power, is received with ill-concealed hostility. The substitution for the substantial advantage of *kofer* of an idea, an ideal—justice—a thing barren of personal profit, seems like the destruction of a valuable kind of property, the extinction of a vested right.

In our next lecture we shall proceed with the further examination of the Deuteronomy texts, whose general effect we have stated.

III

The Deuteronomy texts on the subject of homicide are three in number, and are contained in chapters 4, 19, and 27. Two of them, those in chapters 4 and 27, we may at once set aside as having no important bearing on our investigation.

The first (4. 41-3) is a mere historical note, stating that Moses severed three cities east of Jordan, whither the *rošcaḥ bi-bli-da'at* might flee (*la-nus*), he not entertaining hatred against him (*lo sonc-lo*) before.

There is here no attempt to define murder. There is, however, an interesting novelty. Manslaughter is characterized by a term which is not used in Exodus. There the expression is that God had delivered the unfortunate victim into the slayer's hand (*ha-clohim innah leyado*). Here it is *bi-bli-da'at*, that he had acted without intent, that he had acted on the spur of the moment. In the latter sense of stunning suddenness, the expression occurs in Job 36. 12. Isaiah (5. 13), too, uses the related expression, *mibbeli-da'at*, in the same sense. In short, the idea that death resulting from a sudden quarrel in hot blood is not murder, which prevails in the Exodus text, is not departed from by the use of the new expression.

The third Deuteronomy text on the subject of murder is one line of the old *Arur*-code (27. 15-25): *Arur*, he who slays his neighbour by stealth (*makkeh re'ehu ba-seter*) (27. 24).

Here the term *ba-seter* conveys the idea of being under cover (lying in wait), just as do the words *šadah* and

be'-ormah in the Exodus text. (Examples of its use in an analogous sense are 1 Sam. 19. 2; 25. 20; 2 Sam. 12. 12.)

The important Deuteronomy text is the second, the long one in the nineteenth chapter. It opens with the command to divide the country west of Jordan into three districts, to set apart one city in each of said districts, and to construct a road to it in order that every slayer (*roṣeah*) may flee thither (*yanus*). It then describes the slayer who is not subject to the death-penalty, using the expressions employed in the first Deuteronomy text, *bi-bli-da'at* and *lo sone mittemol shilshom* (without intent or previous hatred). One single case is there presented, apparently as an illustration of what is meant by *bi-bli-da'at*. A man goes into the forest with his neighbour to hew wood, and in felling a tree the head of the axe slips from the helve, hits his neighbour and kills him.

That this is *bi-bli-da'at* is obvious, but it is so far short of illustrating the whole meaning of that term, that one is inclined to believe that the case put really belongs to a series similar to those presented in Numbers, and that it was either misplaced, or alternatively, that it was deemed unnecessary to repeat the cases already given in Numbers, and they were therefore omitted as superfluous repetition.

Some such conclusion is inevitable, when we consider the definition of murder, which immediately follows. It is there described as the act of killing a *sone* (a hated person), by lying in wait for him (*we-arab lo*).

The word *arab* in this connexion is new, not being used in the Exodus text. There the idea of lying in wait is expressed by the words *ṣadah* and *be'-ormah*. It is, however, a word in general use, and conveys exactly the same idea as the expressions employed in the Exodus text.

This definition of murder excludes from that category all the cases of manslaughter derivable from the Exodus text, and from the term *bi-bli-da'at* of this text. It may therefore be regarded as certain that the single illustration of manslaughter (that in the fifth verse) is not intended to be exhaustive. Several other forms of manslaughter, such as those we have already inferred from the Exodus text, and such others as are given at length in the Numbers text, are within the meaning and under the protection of this statute.

Passing by the definition of the offence, we come to the main purpose of the statute.

The experiment of limiting and restraining the power of the sanctuary had not proved successful. Sanctuary was therefore definitely abolished. The *maḳom* and the *mizbeaḥ* were no longer of any avail. The *maḳom* priest's function, so far as homicide was concerned, was at an end.

The land west of Jordan was divided into three districts, in each of which a particular city was to be designated, and to each of these cities there were to be highways. The *roṣeaḥ* might flee (*yanus*) to the designated city of his district—that was the purpose of the institution.

For the first time we hear of the *go'el ha-dam*, the federal officer detailed to every canton as sheriff or executioner, to see that the punishment imposed by federal law should be visited upon the culprit, and to guard against the latter's escape by means of *kofer* or otherwise.

If the *roṣeaḥ* has killed any one, *bi-bli-da'at*, is guilty of manslaughter, he must bear the punishment. No *kofer* will be allowed. He *must* go to the designated city (a state-prison city), there to expiate by internment his offence of manslaughter. If he do not, no agreement for *kofer*

with the dead man's family, or with their *go'el*, with or without the connivance of the *sikne ha-'ir*, will protect him. He must die; the *go'el ha-dam* must put him to death. A reasonable fixed time, the length of which does not appear from the records, was, however, allowed, to enable him to reach the designated city. If he dawdled by the way and exceeded the time, he was amenable to the power of the *go'el ha-dam*, and paid for his carelessness with his life.

This rigid law was the reason for the strict injunction that the road should be in proper order, lest the culprit be delayed by reason of its imperfection, and thus perish by the public's neglect to keep the highway in proper repair, without any delinquency on his part.

There is in this text a clear indication of the procedure. The man who had killed another was tried by the *sikne ha-'ir*. The latter ought to have administered the Hebrew law, that is, they should have carefully examined, in order to determine whether the offence was murder or manslaughter. They were, however, as a rule, disinclined to enforce the Hebrew law, because a conviction of murder, punishable by death, would take away the family's opportunity for money damages. Their inclination would be to find the offence manslaughter, especially because the Canaanite law knew nothing of degrees of guilt in homicide. Whichever the finding, murder or manslaughter, the convict would have to go to the separated city, if he would escape death, since in either case the *go'el ha-dam* had a warrant for his execution after the lapse of the given number of days allowed the culprit to reach the designated city. This warrant ran everywhere, except within the designated city.

If the conviction was of murder, the culprit's object

was to take an appeal; if of manslaughter, to undergo the penalty of internment. The Deuteronomy text gives us no clue as to the nature or whereabouts of this appellate tribunal. One might conjecture that the three districts were somehow connected with Solomon's division of the country, as related in 1 Kings 4, and that each of the designated cities had a royal governor to whom certain powers in this connexion were confided. However that may be, there must have been some superior federal authority in the designated city. The *ziḳne ha-'ir* who had condemned the man for murder, applied to this authority to surrender the appellant. There were, naturally, cases in which the slayer, without waiting for the discovery of his crime, or for his trial, would promptly make the best of his way to the separated city, where he could tell the story of the happening, in his own way, to the *ziḳne ha-'ir*, who, not being of the immediate vicinage, would have no further information on the subject, and would provisionally receive him into the city, where he was safe from the warrant of the *go'el ha-dam*. In such cases the *ziḳne ha-'ir* of his own city would try him in his absence, and, in many cases, the result would be conviction. Whether convicted in his absence or in his presence, the *ziḳne ha-'ir* of his own city, who had condemned him, would have the right to ask for his extradition.

That the case was promptly heard and disposed of, there can be no doubt. If the appellate authority (whatever it was) affirmed the judgement of the *ziḳne 'iro*, they surrendered the culprit to the latter, and thereupon they, the *ziḳne 'iro*, delivered the prisoner to the *go'el ha-dam* for execution. It must follow, as a matter of course, that if the appellate authority was of opinion that the defendant was

not guilty of murder, but of manslaughter only, they retained him in the designated city, for the expiation of the minor crime. No mention is made of the term of detention, and it may have been for life. The circumstances show that all opportunity for *kofer* was intended to be taken away. The *go'el ha-dam* did not represent the family, there was no *maḳom* priest to act as mediator, and even if a settlement had somehow been effected, it would not have helped the culprit. As soon as he left the separated city, the inflexible *go'el ha-dam* was compelled by his warrant to put him to death (Deut. 19. 12).

An interesting feature of this nineteenth chapter is the announcement of what was evidently a novel principle in the law of evidence. It must always be remembered that in the Oracle trials witnesses as such had no function. The denunciator or denunciators, under solemn adjuration, made their statements, and on them the Oracle decided, there being no issue joined between parties.

Doubtless, on the discontinuance of the federal oracle tribunal, the denunciator took on the character of witness ('*ed*'). The whole literature shows that denunciators were objects of hatred and fear to the general community, and a sentiment against convicting a man on their unsupported testimony naturally grew. Hence the law of 19. 15: One witness shall not be allowed to testify against a man for any '*arwon* or *ḥattat* (i.e. any crime or misdemeanour); at the mouth of two witnesses or of three witnesses shall the matter be established.

The statute also contained a special clause permitting the impeachment of witnesses in cases of *sarah* (a capital offence), and prescribing death as the punishment for perjury in such cases.

There is one expression in the text which requires an explanation. Dwelling upon the necessity of building a proper highway to the designated city, in order that the defendant may, in the limited time allotted, reach that city, these words are used (I cite from the Authorized Version): Lest the avenger of the blood pursue the slayer, while his heart is hot (*ki yeham lebabo*), and overtake him, because the way is long, and slay him (19. 6).

From these words a picture has been drawn in many minds, something like this: A man accidentally kills another. Immediately he starts to run for the designated city, hotly pursued by the *go'el ha-dam*, and then there is a race between the two for the gate of the designated city, which is the goal. This view naturally assumes that a valid vendetta law exists alongside of a thoroughly established state law and nullifies it, and that such nullification is itself part of the state law. That this is an impossible position, I have endeavoured to demonstrate. Besides the intrinsic absurdity of the view, a word must be said of the peculiarity of the transaction.

The Version renders *ki* by *while*. *Because* would be at least as good a translation. It takes the expression *his heart is hot* for wild, indiscriminating rage, in which the worthy man is unable to distinguish between a cowardly assassination and an obvious accident. The phrase is a rare one. It does, however, occur in another place (Ps. 39. 4 (3)). The singer utters a penitential psalm. He has been afflicted, and knows that his own backslidings are to blame. He humbly prays to know his end, his hope is in the Lord that he may be delivered from all his transgressions and recover his former health. The state of mind when he thought these things, and before he spoke, he describes as *ham libbi*

(my heart was burning (or hot) within me), meaning that he hesitated to utter his prayer though he earnestly desired to do so.

At most, therefore, the expression in our text would mean: For the *go'el ha-dam* is earnest (zealous), and might overtake and slay him if he be delayed by bad roads.

There is an antithetical expression which confirms this view. When Jacob's sons told their father the marvellous tale of Joseph's high state in Egypt he could not at once believe it (*wayaphog libbo*). König's *Wörterbuch* (Leipzig, 1910) renders this with *erkalten*, so that Jacob's heart would have become cold on hearing the narrative. The misunderstanding is produced by the use of the word *heart*. In English we do not use it in that connexion. We receive news coldly or with warmth, without mentioning our hearts. The Hebrews, when they mentioned them, meant no more than we do.

All that is meant by the sentence is that the *go'el ha-dam* would surely execute his warrant if the defendant tarried beyond his allotted time.

If this explanation be rejected, the fact still remains that the code as now before us was fixed at a time when the whole institution had become a thing of the past, and was therefore subject to the interpretation, or misinterpretation, of a later age.

Respecting the change in the law of evidence forbidding the taking of the testimony of one witness, it may be remarked that the records establish it as having been made very early in the new movement. When Naboth was charged with blasphemy against God and treasonable utterances against the king, it was assumed as a matter of course that two witnesses were required (1 Kings 21. 10, 13).

This was in the reign of Ahab (876-854 B.C.), who was a contemporary of Jehoshaphat of Judah (873-849 B.C.), and the narrative runs as if the law were then so old that the memory of its origin had passed away. We cannot be far wrong if we refer it to Solomon's day (970-933 B.C.).

The Numbers text is the next. In some respects it is, perhaps, the most interesting of all.

The designated three cities with their federal legate, and their indefinite function of interference with the *zikne ha-'ir*, have not accomplished the purpose. The *go'el ha-dam* has not proved his ability to prevent the practice of *kofet*. They have evidently learned how to circumvent him. The whole institution is now to be thoroughly remodelled.

It begins with a measure not only new but subversive of a well-established policy. The guild of Levites had early been selected as itinerant agents to bring home to each of the cantons of the country the principles and policies of the national government. Upon this point the authorities are overwhelming.

JHVH spake to Aaron : Thou shalt have no inheritance in their land, neither shalt thou have any part among them. I am thy part (*helek*) and thy inheritance (*nahalah*) among the *Bne-Israel* (Num. 18. 20).

As to the Levites : . . . it is a perpetual statute (*hukkat 'olam*) throughout your generation, that among the *Bne-Israel* they have no inheritance (*nahalah*) (Num. 18. 23, 24).

The Levites were not numbered among the *Bne-Israel*, because there was no *nahalah* given them among the *Bne-Israel* (Num. 26. 62).

Levi hath no *helek* or *nahalah* with his brethren. JHVH is his *nahalah* (Deut. 10. 9).

The Levite within your country (*be-sha'arekem*) hath no *helek* or *nahalah* with you (Deut. 12. 12 ; 14. 27, 29).

The Kohanim, the Levites, the whole tribe of Levi, shall have no *helek* or *nahalah* with Israel (Deut. 18. 1).

JHVH is their *nahalah* (Deut. 18. 2).

Only unto the tribe of Levi he gave no *nahalah* (Josh. 13. 14).

JHVH, the *Elohim* of Israel, was their *nahalah* (Josh. 13. 33).

Unto the Levites he (Moses) gave no *nahalah* among them (Josh. 14. 3).

The fixed policy attested by these many records may already have been somewhat trenched upon. It was at the beginning of Solomon's reign that he sent the *Kohen* Abiathar in disgrace from the court to his estate (*'al sadeka*) at Anathot (1 Kings 2. 26), which then was, and till the exile continued to be, a Levitical city. At all events, the decree went forth that the Bne-Israel should give to the Levites a portion of their own *nahalah* in the *'arim*, together with appurtenant fields (*migrash*) ; that is, cantonal jurisdiction over the territory so given should be abandoned. This, though violating the spirit of the older law, was in accordance with its letter, which merely forbade Levites to have a *nahalah* within the *'arim* (*be-sha'arekem*). The *nahalah* now acquired by the Levites was no longer within the *'arim*, but outside of them. The Levites were citizens of the federal state only, the jurisdiction over the newly-acquired territory was in them, and the transaction was, in effect, a cession of jurisdiction over the Levitical territory to the federal government.

It was further enacted that out of the forty-eight federal cities thus created (among which, by the by, Anathoth is

reckoned (Josh. 21. 18)), there should be six 'are *ha-miklat* whither a *roṣcaḥ* might flee (*la-nus*).

And thereupon, the general policy being thus explicitly declared, the specific purpose of the 'are *miklat* is enlarged upon. The *roṣcaḥ* is now defined (35. 12) as *makkeh nefesh bi-shigagah*, one who kills a person without intending to do so. The city to which he goes is *miklat* from the *go'el*, in order that the *roṣcaḥ* may not die before he has been adjudged guilty of murder by the federal court, the 'Edah (35. 12). Three of these 'are *miklat* shall be east of Jordan, and three west of it. The right to a federal trial for murder belongs not only to the Bne-Israel, but also to the *ger* and the *toshab*. The 'Edah is the final court of appeal to determine whether the judgement of the local *ziḡne ha-'ir* condemning the defendant to death for murder, shall stand (35. 24). The issue presented to the 'Edah is defined as being between the condemned man on the one side and the *go'el ha-dam* on the other.

If the 'Edah refuses to affirm the conviction of murder, and declares the offence manslaughter, the *go'el ha-dam's* death-warrant is suspended, but not annulled. The prisoner is remanded to the 'ir *miklat*, there to remain. The term of his confinement in that city is now fixed. He is to be discharged at the death of the *Kohen ha-gadol* (the *Kohen* anointed with the holy oil). If he at any time before commits prison-breach, that is, goes outside of the city wall, the *go'el ha-dam's* death-warrant becomes operative, and it is the latter's duty to execute the prisoner. This execution is lawful and justifiable. No blood-guilt arises from it (*en lo dam*) (35. 27).

At the expiration of the prisoner's term of service the death-warrant loses all force and validity. The manslayer

returns to his home and estate, free from any further consequences. His crime has been fully expiated (35. 28).

Thereupon there is an emphatic prohibition of *kofer* in murder cases; the murderer must be put to death (35. 31). And this is followed by an equally emphatic prohibition of *kofer* in cases of manslaughter; the defendant's term in the 'ir *miḳlat* may not be evaded or abridged by compounding (35. 32).

The general policy is then vindicated by a declaration of the principle that murder pollutes the land, and that the land cannot atone for this pollution save by the blood of the murderer (35. 33). And this principle is enforced by the thought that JHVH dwells in the land, that JHVH dwells among the Bne-Israel (35. 34).

To this Numbers text that of Joshua 20 is a mere pendant. It begins by directing the appointment of six 'are *ha-miḳlat*, whither the *roṣeah* (*makkēh nefesh bi-shgagah, bi-bli-da'at*) may flee, and they shall be for *miḳlat* from the *go'el ha-dam* (20. 3). When the defendant arrives at the gate of the *miḳlat* city he stands before the *ziken ha-'ir* of that city and states his case. It is safe to affirm that he always declares that it was no murder, that *ha-elohim innah le-yado*, that it was *bi-bli-da'at*, that it was *bi-shgagah*.

The hearing is unilateral, being, in effect, a motion to grant an appeal from the judgement of the *zekenim* of his 'ir. The probability is, that under such circumstances a *prima facie* case for granting the appeal was generally made out, whereupon he was admitted for detention into the federal city.

If the *zekenim* of his city, or the *go'el ha-dam*, believed that there was no proper case for appeal, the latter went to the 'ir *miḳlat* and applied to the *ziken ha-'ir* for the

surrender of the prisoner to his custody. This he was compelled to do, because his warrant, though it ran everywhere else in the country, was ineffective in the federal territory. Had he executed it there, he would have been himself guilty of murder. It was for this reason that he asked for the prisoner's surrender. This was, in effect, a motion to quash the appeal. Originally the *zīkne ha-'ir*, perhaps in conjunction with a federal legate, heard the case on this motion and determined it. If they decided to quash, the prisoner was surrendered to the *go'el ha-dam* (Deut. 19. 12). Under the law, as it was recast, the authorities of the *miḳlaṭ* city were shorn of this power, and the case had to go to the '*Edah*' for trial and judgement (20. 6).

And this exclusive jurisdiction of the '*Edah*' is emphatically reiterated. 'These are the '*are ha-mi'adah* for all the Ben-Israel and for the *ger* whither any *makkēh-nefesh bi-shgagah* might flee (*la-nus*), and not die by the hand of the *go'el ha-dam* until he shall have been adjudged guilty of murder by the '*Edah*' (20. 9).

There is one other feature of the Numbers text which must not be overlooked. It is a specific law of evidence for homicide cases only, and reads thus:

Homicide (*kol-makkēh-nefesh*).

By the mouth of witnesses he (the *go'el ha-dam*) shall put the *roṣaḥ* to death. One witness may not testify to procure a person's death (35. 30).

There are new features of this Numbers text which are worthy of remark.

For the first time we hear of '*are miḳlaṭ*. It will be remembered that in Exodus there was sanctuary in the *maḳom*, and in Deuteronomy there were separated cities. These were all in cantonal territory. Now we have federal

cities with a distinctive name. All the versions render the word *miklat* with refuge or asylum. The translators, however, all laboured under the prepossession that the ancient institution, the sanctuary, was still in existence, and that it permeated the law always. The fact is, however, that the establishment of the separated city of Deuteronomy extirpated the ancient sanctuary, and created an institution belonging purely to the region of civil law. It did more. It gave a distinct punitive character to the internment of the manslayer in the separated city, though the text lacks definiteness as to the duration of the punishment.

When the system was thoroughly reconstructed, as the Numbers and Joshua texts show it was, the idea of the 'ir *miklat* was no longer doubtful or confused. It was a place for the detention of a convicted murderer, pending an appeal to the federal court, the 'Edah, and for the internment of a convicted manslayer during the term of life of the *Kohen hagadol* then in office.

Refuge or asylum gives no adequate notion of these functions of the 'ir *miklat*.

The word *miklat* is obscure. It occurs nowhere else than in the legal and historical passages we have cited, and in their doublets in Chronicles. The root *kalat*, from which it is derived, is represented in but one other passage in the Bible. Leviticus 22. 23 speaks of a bullock or of a lamb that is not perfect enough to offer for a vow (*neder*), but may be accepted for a *nedabah*, a gift (not for sacrifice). The characteristics that constitute this defect are spoken of as *sarua'* or *kalut*. The Authorized Version renders *sarua'* by *something superfluous*, and *kalut* by *something lacking*, recognizing a certain opposition between the two. Kautzsch understands the meaning of *sarua'* to be that the animal

has a limb or limbs which are too long, and *kaluṭ* that the limb or limbs are too short. Strangely enough, the antithetical word *sarua'* occurs only in Leviticus, once in the instance cited and again in 21. 18, where the Authorized Version consistently renders *something superfluous*. Here Kautzsch again understands it to mean having a limb or limbs which are too long.

The root *sara'* (from which *sarua'* is derived) is represented by only one other word in the Bible. Isaiah, in the course of a bitter reproach addressed to the Jerusalem magnates, uses the figure (Isa. 28. 20), that the bed is too short for a man to stretch himself on it (*ki kaṣar ha-maṣṣa' me-histarca'*). The verb *sara'* therefore means to stretch one's self at will. If the verb *kalaṭ* is its opposite, as all seem to agree, it must mean to be 'cabin'd, cribb'd, confin'd', and this meaning would agree exactly with the ascertained function of the '*ir miḳlaṭ*, the prison city.

While we are on this branch of the subject, it may be as well to say a word on the subject of fleeing. The defendant always flees to the '*ir miḳlaṭ*. The verb is *nus*, which undoubtedly means to flee, and that in prehistoric times, when murderers sought altars for asylums, they fled to them, need not be questioned. The point is that the verb *nus* became technical, and long after men had ceased running to the cover of an altar, it continued to be used for the acts men did under later law to stay judgement against themselves. In our own language, when a man loses his case, he promptly says that he will go to the Supreme Court at once, though he sits still.

We may therefore admit that the word was used of old when men sought the protection of the *mizbeah*. When, however, the separated city was established, it was inevitable

that a certain time would be allowed for the defendant to reach it. He was not to run a race. Undoubtedly he had to take his appeal without delay. The modern devices of dilatory motions and endless appeals on trivial and ridiculous points, which bring justice into contempt, would have met with no tolerance. Doubtless the time set for appeal was short. Unless taken within a limited number of days, it was not a *supersedeas*, and the public executioner (*go'el ha-dam*) was in law bound to execute the death-warrant. During the few days, however, the defendant was perfectly safe. Naturally he could not stay at home. It was the part of common sense to proceed at once to take his appeal. And this necessity may easily be described by a word meaning *to act promptly, to hasten, to go at once*. And this, we believe, is all that the verb *nus* means in this connexion, though it many times in other connexions means to flee, to run away.

That it has other meanings than to run away in fear the literature shows:

2 Kings 9. 3, 10. Elisha instructed one of his corps of *nebi'im* to anoint Jehu king of Israel, and having done so, to depart at once, without delay (*wc-nastah we-lo tehakkeh*).

There are others in which the word means to turn to one for help.

To whom will ye turn (*tanusu*) for help? (Isa. 10. 3).

If those to whom we turned for help (*nasnu*) have fared thus, how shall we escape? (Isa. 20. 6).

There are still other instances in which it means an impetuous forward movement, the very reverse of flight from a pursuer:

He breaks in like a confined river

Which the spirit of JHVH drives before it (*noscsah bo*)
(Isa. 59. 19).

Ye would not, but ye said :

No, on horses will we fly (*nannus*)—

Therefore shall ye flee (*tenusun*) ;

On the fleet (*kal*) will we ride—

Therefore shall ye have fleet pursuers (*yikḵallu*)

(Isa. 30. 16).

In the one instance, that of Joab, where it means seeking the protection of the altar, there was really no pursuit and no running away. We may be sure that Joab walked calmly to the *ohel* JHVH (1 Kings 2. 28, 29).

The most important passage in which the word is used is in Prov. (28. 17). The Hebrew text is :

Adam 'ashuk be-dam nafesh, 'ad-bor yanus ; al-yitmeku bo.

The Authorized Version is :

A man that doth violence to the blood of any person shall flee to the pit ; let no man stay him.

The translation is not happy, since it conveys no clear meaning. Others understand it to mean that a person guilty of murder must be a fugitive till death, and that no man should aid in softening his hideous fate.

It would seem, however, that these renderings rest on the supposition that the *bor* is the grave, man's last resting-place. We shall hereafter take occasion to show that *bor* is a prison, and, moreover, that *'ir miḵlat* disappeared no later than 850 B.C., and that thereafter the homicide went to the *bor*. When we consider the Proverb in question in that light, it becomes a sane, popular saying.

When the *'arc miḵlat* were replaced by prisons in various places, and the accused was sent thither to await his

trial, or the result of his appeal, he would, without doubt, have liked to avoid this confinement.

The Proverb is a warning to friends that helping him will hurt themselves. In plain English: Don't interfere with a murderer's going to prison. The ordinary mode of such interference would be by surreptitiously harbouring him. *Al yitmeku bo* means, therefore, Do not receive him.

Isaiah (33. 15) gives us a fine instance of the use of this verb *tamak* in a sense closely related. It is in his description of the just man:

He walketh righteously and speaketh uprightly.

He despiseth the gain of oppressions.

He closeth his hands against receiving bribes (*mitmok ba-shohad*).

He stoppeth his ears against blood-informers.

He shutteth his eyes against the sight of evil.

There is another new term in this text. The defendant, who is to be interned in the 'ir *miklat*, is now the man who has killed *bi-shgagah*, a term not before used in the criminal law, either in the Exodus or the Deuteronomy text. In the former it was *ha-elohim innah le-yado*, in the latter *bi-bli-da'at*. For both these ideas there is now substituted the general statement that the defendant acted in error, that there was no intent to kill, or, as the versions render it, he acted unwittingly.

One may note in this a certain change in the mental atmosphere of the law courts. When the *zikhne ha-'ir* of the various cantons were to administer the law, the act of manslaughter was described as the act of God, having been perpetrated without intent by man. For the federal (Levitical) courts, however, there was offence in this. The unfortunate slayer, however guiltless of murder, was never-

theless a criminal of a certain grade, and the ascription of the act to God was repellent. It could be defended only on the subtle theory that Heaven punished in some mysterious way men who think or secretly do wicked things which human law and justice are too feeble and short-sighted to reach. According to this theory, both the manslayer and his victim have offended Divine justice, the former in a lesser, the latter in a greater degree. The crude fact that one man had killed another, without warrant of law, brushed aside this subtle theologizing, and the act was now described as a crime, however unintentional, committed by the slayer.

The word itself does not import freedom from blame. Its root-word, *shagag*, has an equivalent, *shagah*, and though this means to err, to go wrong, it frequently reproaches the wanderer that it is his own wickedness which led him astray.

When Saul confesses that he ought not to have sought David's life, he says, *wa-eshgeh* (I have erred), admitting that he had done the wrongful acts, but had not realized how wicked they were (1 Sam. 26. 21).

Isaiah, reproaching Ephraim, says that the *Kohen* and the *Nabi* have erred (wandered from the right path, *shagu*) because of their own bad habit of drunkenness, thus charging them with wickedness as the cause of their error (Isa. 28. 7).

In Leviticus the word is often used to denote certain classes of doings for which men should bring sin-offerings. They are all arrayed under the head of *bi-shgagah* (inadvertence), and may be committed by the high priest (Lev. 4. 3), by the *'Edah* (4. 13), by the *Nasi* (4. 22), and by any member of the *'Am ha-areṣ* (4. 27); by any person whatsoever (5. 15).

In Numbers there is reference to sins committed inadvertently (*bi-shgagah*) by the 'Edah (15. 24), and by any individual whatever (15. 29).

The express distinction is, however, made between this class of sin and that other which is deliberate and wilful, and which is described as being done with a high hand (*be-yad ramah*) (15. 30).

Every sinner and every manslayer was naturally apt to plead that his sin or his crime was *bi-shgagah*. It is to be feared that this plea was, in time, looked upon with suspicion. Ecclesiastes (5. 6) throws discredit upon it by intimating that in the Heavenly tribunal it would tend to aggravate rather than to alleviate the sentence. 'Say not, before the angel, it was *shgagah*; wherefore should God be angered by thy speech?'

In the legal passages, however, the word was doubtless used technically and construed scientifically to mean any homicide which lacked the quality of malice aforethought.

The next feature of the text is the vesting of the jurisdiction in the federal high court, the 'Edah. We are not told where the 'Edah sits, but where it does not sit is made perfectly plain. The 'ir *miklat* is not the seat of the 'Edah. In cases where the latter reverses the judgement of the *zikhne ha-'ir*, and declares that the defendant is not guilty of murder, but is guilty of manslaughter, it is the 'Edah's duty to restore him to the 'ir *miklat* (35. 25). In other words, when the trial before the 'Edah was to be held, the prisoner was taken, in charge of the authorities, to the seat of the 'Edah's sessions (probably Jerusalem). There the trial took place, and if the defendant was found guilty of murder, the execution doubtless followed then and there. If, however, the degree of the offence was decided to be

manslaughter, the 'Edah's officials took him back to the 'ir *miklat* from which he had come, there to undergo the confinement imposed by the law.

And now follows perhaps the greatest peculiarity of this text. Murder and manslaughter are both to be defined, and their punishment ascertained. Twelve verses (16-27) are devoted to the subject. The first three (16-18) appear to be extracts from records of actual cases where the accused were convicted of murder, each of them being followed by the death sentence in the words of the statute: *mot yamut ha-roṣeal*, and the next verse (19) gives the court formal direction for its execution: The *go'el ha-dam* will put the *roṣeal* to death; will put him to death *be-fig'o bo* (forthwith).

The expression *be-fig'o bo* is technical. When a man was doomed to die for crime, the old Hebrew law permitted no delay (Lev. 24. 14; Num. 15. 35, 36; Deut. 21. 21; 22. 21, 24; Joshua 7. 25; Judges 6. 30). The sentence therefore included the command to the *go'el ha-dam* that he execute it forthwith.

The word is used in this sense in Exod. 5. 3. When Pharaoh declares that he has no knowledge of JHVH and will not let Israel go, Moses and Aaron urge him to relent, because JHVH had commanded a three days' journey into the desert for sacrifice, and failure to obey would be instantly punished with death by pestilence or sword (*pen yifga'enu ba-deber o be-hareb*).

When Gideon captured Zebah and Zalmuna and devoted them to death, those sturdy warriors calmly told him to kill them forthwith: *Kum attah ufga' banu* (Judges 8. 21).

When the Judahites asked Samson to surrender in order that they might hand him over to the Philistines, and thus save themselves from the latter's forays, he made this

condition: Swear that ye will not yourselves kill me (*pen tifge'un bi attem*) (Judges 15. 12).

When Micah reproached the Danites for their audacious robbery, they bade him be silent or he and his would die on the spot (*pen yifge'u bakem anashim mare nefesh we-asafiah nafsheka we-ncfesh beteka*) (Judges 18. 25).

When Saul ordered his soldiers to kill the priests at Nob, they would not (*we-lo abu lifgoa' be-kohane JHVH*) (1 Sam. 22. 17). Doeg, however, did so on the spot (*wa-yifga' hu ba-kohanim*) (1 Sam. 22. 18).

When the Amalekite reported that he had killed Saul, David called one of his men and ordered him to kill the self-confessed assassin of JHVH's anointed: *Gash, pega' bo*, whereupon the soldier slew him (2 Sam. 1. 15).

And the words are used to describe the immediate death of Adonijah at the hands of Benaiah (1 Kings 2. 25).

Solomon also ordered Benaiah to execute Joab forthwith by the words: *Lek pega' bo* (1 Kings 2. 29, 31, 32, 34). And the like happened to Shimei (*wa-yifga' bo wayamot*) (1 Kings 2. 46).

A man escapes a lion, and a bear kills him (*ufga'o ha-dob*) (Amos 5. 19).

This first group of four verses (Num. 35. 16-19) is followed by a separate group of two (20. 21). These define murder. The important elements are previous enmity (*sin'ah, ebah*) or lying in wait (*sediyah*). *Sin'ah* and *ebah* are synonymous. In Exodus neither word is used. In Deuteronomy there is *sin'ah*. The words *yazid* and *be-'ormah*, however, which are used in the Exodus text, necessarily imply it. The former indicates an insolent purpose to kill, and the latter deliberate preparation for carrying this purpose into effect.

Ṣediyah is used in Exodus, while Deuteronomy, without using the word, employs a synonymous term (*we-arab lo*).

Thus far Exodus, Deuteronomy, and Numbers are in substantial agreement. The new feature in the Numbers law is the detailed description of the physical acts by which murder may be committed. These are probably not intended to be an exhaustive list, but they certainly go far to cover the field. An iron weapon is presumed to be murderous (35. 16); a stone or a wooden weapon may be. Whether or not these are murderous weapons must be determined by inspection, and by investigation into the previous relations of the parties. If a man kill another with either of them, the law requires that they be such wherewith a man may die, meaning thereby, would be likely to die, before their use raises the presumption that murder was intended. Wherever this presumption arises, it may be negated by proof of the fact that there was no previous *cbah* between the parties.

Murder, however, may be committed without any weapon. A man may kill another with his hands. In such cases *cbah* or *sin'ah* must be clearly proved (35. 21).

Following the definition of murder is a group of two verses (22-3) defining manslaughter.

The first (22) is a mere negative of 20. The latter declares it to be murder if death is caused by thrusting him (*yehdafennu*) of hatred (*sin'ah*) or hurling at him (*hishlik*) or lying in wait (*ṣediyah*).

The former declares it to be manslaughter if death is caused suddenly (*be-feta'*) by thrusting him (*hadafo*), without hatred (*cbah*), or by casting upon him (*hishlik*) anything without lying in wait (*ṣediyah*).

And to this is added verse 23, which also reduces the

offence to manslaughter, if he cast upon him (*wayappel*) a murderous stone, seeing him not, not being his enemy (*oyeb*), nor seeking to harm him. The same principle would doubtless apply if, instead of a murderous stone, it was a murderous wooden instrument.

It will be noticed that the new term, *be-feta'*, is now introduced. It means an event that not only was not foreseen, but that happened suddenly, like lightning from a clear sky. The expression seems apt to designate one of the many quarrels which arise between high-tempered men who may not even know each other, but who are suddenly brought into contact, under circumstances which induce one or the other to believe that he has been offended. The idea thus conveyed is the same as the *ha-ēlohim innah leyado* of Exodus, and the *bi-bli-da'at* of Deuteronomy.

The last group, four verses (24-37), are a pendant to verse 12, which provides for trial by the '*Edah*.'

Verse 24 affirms this, by declaring that the '*Edah*' shall judge between the slayer and the *go'el ha-dam*, according to the *mishpatim* which we have just considered. The term *go'el ha-dam* is here used as representing what we would call the commonwealth, the public in its rôle of the prosecutor of crime.

Verse 25 provides that if the commonwealth's case is not made out, the '*Edah*' remands the manslayer to the '*ir miklat*', there to abide until the death of the *Kohen ha-gadol*.

Verses 26 and 27 provide against the manslayer's escape from the '*ir miklat*' before the end of his term.

Incidentally, they reveal a feature of the negotiations between the cantonal authorities and the federal government. When the separated cities were found inadequate

for the purposes of the latter, and it had succeeded in procuring from the cantons a cession of their jurisdiction over certain cities in the various districts of the country, the condition was agreed upon that a death-warrant issued by the *šikne ha-‘ir* should continue to be valid everywhere in the land except in places under exclusive federal jurisdiction. This is the meaning of verses 26 and 27. So soon as the manslayer broke bounds, he was at any point in the country subject to the enforcement of the original death-warrant, which was merely suspended while he was on federal territory, but was not annulled or made void until he had served his full term in the *‘ir miḵlat*. When that had been done, the warrant was dead.

A word is needed on the evidence law in this text. It differs from the Deuteronomy law in several respects. The latter, as we have seen, is general and applies to the hearing of every crime and misdemeanour. It also affirmatively requires two witnesses or three witnesses (19. 15).

Besides this general law, however, Deuteronomy has another version which limits it to capital cases (17. 6).

The Numbers statute regulates murder trials only (35. 30). It varies from the Deuteronomy law in that while it prohibits judicial action on the testimony of one witness, it prescribes no specific number of witnesses as necessary. It merely uses the plural, witnesses.

The probability is that the general law as stated in Deut. 19, 15 remained unmodified, except in so far as to permit trial and judgement on the testimony of two witnesses without more. The alternative number 'three witnesses', used in Deuteronomy, is difficult to explain. The thought in it seems to be that the denunciator, or the plaintiff, must be corroborated by two disinterested wit-

nesses. By the time of the Numbers statute he had probably been disqualified as a witness. Hence the change.

The Joshua text (20. 2-9) is, as has been said, a mere pendant of the Numbers text. It has the peculiarity that the Deuteronomic term *bi-bli-da'at* is used in verse 3, apparently as an explanatory note to the word *bi-shgagah*, which it follows, and in verse 5 is used without *bi-shgagah*. These, however, are matters of no moment.

The value of the text lies in its supplying details necessary for the completion of the Numbers text.

The latter tells us that the *roṣeah* shall go to the *'ir miḳlaṭ*, and that from it he shall be taken to the seat of the *'Edah*, there to be tried. The Joshua text describes the proceedings when he reaches the *'ir miḳlaṭ*. His admission is a question to be decided by the *zeḳenim*, who, as the city is Levitical and federal, are governed by the federal law alone. As he states his own case, he would in most cases declare such facts as would establish *shgagah*. If he failed to do so, but on his own showing was a mere murderer, they would not receive him, and he would be delivered to the *go'el ha-dam* for execution, but if he were once admitted, the application of the *go'el ha-dam* for his surrender would have to be refused, and he would have to be tried by the *'Edah*. To the *'Edah*, whose seat was probably in Jerusalem, he would be taken by the federal authorities. At that trial his *'ir* would be represented by its *go'el ha-dam*, and perhaps by some of its *zeḳenim*. If the conviction of his *'ir* was affirmed, he would be executed forthwith. If, on the other hand, the *'Edah* ruled that it was manslaughter, he would be remanded to the *'ir miḳlaṭ* to serve his term.

We have still the Leviticus texts to examine. They

are silent as to the distinction between murder and manslaughter, and hence fail to indicate that the latter offence, if it existed in the eyes of the law, was in any degree punishable.

They have, however, one prominent feature which stamps them unmistakably as federal law. The *makkeh-ish* must be put to death (*mot yumat*) (24. 17, 21).

It behoves us, therefore, to ascertain the probable reason for the curtness of the passages.

They form part of a little *Torah* of twenty-four verses (Lev. 24. 10-23). It begins by a rather full report of the case tried by oracle, wherein the son of a Hebrew woman by an Egyptian man was sentenced to death for blaspheming the oracle (cursing the *Shem*), and shows that the principle established by that case was that the Hebrew law held persons not pure Hebrews (*gerim*) answerable to the law as fully as if they were pure Hebrews (*ezrah*).

To this, which serves as the text, are added brief notes :

1st. That a *makkeh-ish* must undergo the death penalty.

2nd. That a *makkeh-bchemah* must compensate the injured party, *nefesh tahat nefesh* (beast for beast).

3rd. That a maimer shall be reciprocally maimed (breach (*sheber*) for breach, eye for eye, tooth for tooth).

4th. That *mishpat* (law) is single—the same for *ger* as for *ezrah*.

The origin of this interesting and curious document may be conjectured to be somewhat as follows. The projected law reform, we may be sure, was not the work of mere theorists or idealists. It was a practical measure to unify and solidify the kingdom. It demanded the extinguishment of local customs which were hostile to the general principles of the federal law. It had, however, other ends to attain

By this time the Hebrews were in unquestioned supremacy in the cantons, and the *gerim*, though everywhere considerable in numbers, were relatively powerless, as being hopelessly in the minority. They would naturally protest to the federal government that they were not fairly treated.

In the previous lecture it was intimated that the first step in the law reform was the limitation of trial and sanctuary to the cantonal capital, and that to assure the execution of the law, untainted by Canaanite custom, *Kohanim* or Levites were sent as assessors to the *ziḡne ha-'ir* in each of the said cities. On this point we have the precious *ziḡne ha-'ir* document (Deut. 21. 1-9), which happily, though not too relevantly, interjects into the proceedings of the *ziḡne ha-'ir* this note: And the *Kohanim* the *bne-Levi* shall come near; for them JHVH thy God hath chosen to minister unto Him, and to bless in the name of JHVH, and according to their pronouncement ('*al pi hem*') shall be decided every *rib* (controversy) and every *nega'* (assault) (Deut. 21. 5).

If now we imagine one of these *Kohanim* appointed by the federal authorities to go to one of these cantons as assessor, he would naturally be charged to see to it that the *gerim* obtained full justice. The central authorities would give him a *sefer*, containing the great doctrine of the equality of all before the law, and the fact that the foundation case bore rather hard on the *ger* was an additional argument to show that when the case was the other way, it was just that the *ger* should receive the advantage. The notes to this original *sefer* may fairly be presumed to be the memorandum made by one of these *Kohanim* of three classes of cases, in which he succeeded in having the doctrine fairly carried out.

This suggested explanation of the form of the Leviticus text involves the conclusion that it was intended, primarily, to inculcate the doctrine and policy of the state, that the *ger* was equal in law to the *ezrah*, whether such equality would operate to his advantage, or to his disadvantage. If such were the true origin and intent of this Leviticus *Torah*, it would be idle to seek in it any elaboration of other doctrines or principles than the one it was specially intended to illustrate. For the purposes of our present investigation, it may therefore be dismissed without further comment.

This review of the texts would lack completeness if we failed to consider the only text, other than the legal ones, which has the term *go'el ha-dam*. It is the fourteenth chapter (vv. 1-24) of 2 Samuel.

The length of this lecture, however, forbids further expansion, and the matter may well go over to the next.

(*To be continued.*)

A VOLUME OF THE BOOK OF PRECEPTS
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ARABIC TEXT

I a

זכר את הטומאה נעלמו ממנו זה וזה והשתחוה או ששהה כדי השתחוואה
או שנדבר עם חברו כדי השתחוואה או שנכנס לתוספת העזרה ושהה כ[די]
השתחוואה חייב על כל אחת ואחת דברי ר' ישמע' שהיה ר' ישמע' אומ' ונעלם
ממנו ונעלם ממנו שני פעמים לחיוב על היעלם טמאה ועל היעלם מקד[ש]
5 ר' אליעזר ור' עקיבא אומ' אינו חייב אילא על היעלם טמאה בלבד וקאלו
ונעלם ממנו נעלמה ממנו טמאה או יכול נעלם ממנו מקדש תלמ' לומ'
ונעלם ממנו והוא טמא על העלם טמאה הוא חייב ואין חייב על העלם

Fol. 1 a, l. 1. This is the end of the eighth precept of the third section of the third book. As this section evidently dealt with civil matters, chiefly with the laws of damages, the discussion about the punishment for remaining in the sanctuary while unclean, must be regarded as a digression. Owing to the author's scheme of treating every detail from all possible points of view, such digressions are frequently indulged in. See especially fols. 4 a, ll. 21 ff., and 18 b, ll. 8 ff. On the other hand it would serve no useful purpose to speculate as to what this precept actually was. The passage occurs in Tosefta Shebu'ot 1. 8, where it is corrupt, as several words obviously fell out through homoioteleuton. In order to describe all possibilities the text must be נטמא בעזרה ונעלמה ממנו טמאה וזכר את המקדש נעלם ממנו ונו' מקדש וזכר את הטמאה נעלמו ונו'. This emendation is suggested by our text as well as by Babli Shebu'ot 14 b.

1. 2. [שנדבר] The printed text has ונדבק which is certainly inferior, if not impossible. Z[uckermandel] has שמדבר.

1. 6. [ונעלם ונו'] *Sifra Wayyikra*, chapter 12. 7 (ed. Weiss, p. 23 b). See also Shebu'ot 14 b, Keritot 19 a, Niddah 28 b.

מקדש דברי ר' עקיבא ר' אליעזר אומ' השרין ונעלם ממנו על העלם השרין
 הוא חייב אין חייב על העלם מקדש ר' ישמ' אומ' ונעלם ממנו ונעלם ממ'
 10 שני פעמים לחייב על העלם טמאה ועל העלם מקדש וקאלו תניא מנין
 שאינו חייב אילא על שיש בה ידיעה בתחלה וידיעה בסוף והיעלם ג'תים
 תלם לז' ונעלם וקאל אתלמוד פי שר' אלסנדה אמ' רבה לא שנו אילא השת[הוה]
 כלפי חוץ אבל השתחוה כלפי לפנים אף על גב דלא שהא: והא השתחוה
 קאתני הכי קאמ' אוזו היא השתחוואה שאין בה שהייה ואיוו היא השתחווא[ה]
 15 שיש בה שהייה שאין בה שהייה כריעה שיש בה שהייה פישוט ידים ורגל[ים]
 וכמה שיעור שהייה פליגי בה ר' יצחק בר נחמני וחד דעימיה ומנו ר'
 שמעון בן פוי ואמרי לה ר' שמעון בן פוי וחד דעימיה ומנו ר' יצחק בר נחמני[ני]
 ואמרי לה ר' שמעון בר נחמני חד אמ' מכריעה ואילך וחד אמ' כנגד הפסוק
 כלו וכל ישראל ראים ברדת הא' וג' ודלך כב לפטה:
 20 אלשריעה אלמ מנה* תונב עלי מן אצרים נאר פכרגת מן מכאן
 צרימאה פצארת² שוכא ואחרקת כרכא או סנבלא קאימא פי מנבת[ה]

1. 10. Shebu'ot 4 a.

1. 11. The בנתיים ה is suspended in the manuscript.

1. 12. *Ibid.*, 16 b. רבא, not רבה, is the authority there. Although the passage is corrupt in this quotation, as an essential sentence is omitted after הכי קאמ', the phraseology would suggest that Ḥefeṣ had a slightly different text. In the Talmud two versions of Raba's statement are recorded, and Ḥefeṣ quotes the second.

1. 19. כב This is not accurate: the verse in 2 Chron. 7. 3 contains twenty-three words, and there is no possible way of reducing it to twenty-two, for if we omit monosyllabic unaccented words there would be less than that number.

1. 20. [תונב] קסם. מנה The pronominal suffix of מנה refers to קסם. This verb may be active, having אלשריעה as its subject, or passive, being used impersonally. The Hebrew translator of the first two precepts quoted by Judah b. Barzillai in his commentary on the *Book of Creation* construed it in the former way. But the dots and space after מנה seem to indicate that the copyist took it to be passive. For the sake of clarity I followed the latter in my Hebrew translation.

1. 21. [סנבלא אלך] Literally: *cars of corn standing in the plantation*. These four words represent Hebrew קמה. Sa'adya translates it by סנבלא קאימא.

או נירה ממה פי אלציאע אן יורי קימה דלך כק' כי תצא אש ומצ' וג'
צאדם אלנאר וגאלבהא פאחרקת סואן פי אדי דלך' פאמא אן כאן אלסבב
פי צדימהא הבוב ריח לא ניר פאלנאלב להא בריא לקו' ובי תצא אש ומצ'

i b

ומצאה קוצ' וג' כי תצא מעצמה שלם ישלם המבעיר את הב' פתח בתוב
בניזקי ממונו וסיים בנוקי נופו ואיצא השלח את הבערה ביד חרש יוטת
וקטן פטור מדיני אדם וחייב בדיני שמים שלח ביד פקח הפקח חייב
אחד מביא את העצים ואחד מביא את האור המביא את האור חייב בא
5 אחר ולבה המלבה חייב לבתו הרוח כלם פטורין: ואלעאמד אחראקהא
ואלניר עאמד סיואן פי אדא אלקימה לקו' אדם מועד לעולם בין ששש
שוגג ובין מויד בין ער ובין ישן סמה את עין חברו ושבר את הכלים
משלם נוק שלם ואיצא לעשות שאין מתכוין כמתכוין: פאמא אן
עברת אלנאר נהרא או ראצעה ערין כל ואחד מנהמא ח' אדרע או ערין
10 נאדה י' דראצא במא פוק דלך פאחרקת פלן ילום לדלך תאדיה קימה
ולא נירהא פאן כאן אלנהר או אלראצעה ואלנאדה אקל מקדארה מן דלך

1. 22. Exod. 22. 5.

1. 23. [וגאלבהא] I rendered this word by מביא = جَالِبٌ *one who brings,*
or transfers from one place to another. Does it, perhaps, represent המלבה?
But I have never met جلب or غلب in that sense.

1. 24. Baba kamma 22 b, 60 b. In these texts another passage is
inserted before שלם; but Ḥefeṣ only quotes the interpretation bearing on
Exod. 22. 5.

Fol. i b, l. i. [בתוב] Scribal error for הכתוב.

1. 2. Baba kamma 59 b.

1. 4. [מביא] The printed text has הביא in both places.

1. 6. [סיואן] The orthography is exceptional, as usually short vowels
have no symbols in this manuscript. [אדם וכו'] Baba kamma 26 a.

1. 8. *Mekilta d' R. Simeon b. Yoḥai*, p. 141 (ed. Hoffmann).

1. 9. [ראצעה] This word obviously represents שלולית *a pond*, but is not
recorded in any lexicon in that sense. As رَضَعَ denotes *he sucked*, رَضْعَةٌ
may be *a place where water gathers*.

1. 10. [נאדה] = جَادَّةٌ which is an excellent equivalent for הרבים.

פילומה אלקימה לקו' עברה נהר או שלולית שהן רחבין שמנה אמות
 פטור ואיצא עברה נהר שהוא גבוה ארבע אמות או דרך הרבים או נהר
 פטור וקאלו דרך הרבים מאן תנא אמ' רבא ר' אליעזר היא דאמ' שיש עשרה
 15 אמה דרך הרבים ומן אצרים נארא פי מלכה פארתפעת הי או שרארהא
 או טפרת פאחרקת מלך גירה פלינטר אן כאן מקראר נסמהא אלדי
 קצד צארמהא מתי יתעדי מנה אלי מא אחרקתה פילום צארמהא
 קימה דלך' פאמא אן כאן לים פי קוה נסמהא דאך מא יתעדי מנה אלי
 מא אחרקתה בל סבב דלך ריחא ללוקת פקות להיבהא או גיר דלך פאחרקת
 20 פצארמהא לדלך בריא לקו' המדליק בתוך שלו כמה תעבר הדלקה ר' אליעזר
 בן עזריה אומ' רואין אותה כאילו היא באמצע בית כור ר' אליעזר אומ' שיש
 עשרה אמה דרך הרבים ר' עקיבה אומ' חמשים אמה ר' שמעון אומ' שלם
 ישלם המב' אה הכל לפי הדלקה אמ' רב נחמן אמ' רבה בר אבוח אמ'

2 a

רב הכל לפי גובהה של דלקה אמ' רב יוסף אמ' רב יהודה אמ' שמואל הלכה
 כר' שמעון' וקאלת אלתוספה פי כמה מא תתנאזה אלנאר אר אצרימ[ת]
 ואלריה עצאף פאחרקת המדליק בתוך שלו כמה תעבר הדלקה ר'
 אליעזר אומ' שיש עשרה אמה דרך הרבים בשעת הרוח שלשים
 5 אמה ר' יהודה אומ' שלשים אמה בשעת הרוח חמשים אמה ר' עקיבה אומ'

l. 12. Baba ḥamma 61 a.

l. 13. *Ibid.* The first נהר is no doubt a scribal error for נדר, as these words are graphically similar.

l. 14. *Ibid.* Instead of דאמ' the printed text has דתנן.

l. 17. [מתי] Read מא, as in the next line.

l. 18. [כאן לים] A vulgar combination.

l. 20. *Ibid.*, 61 b.

l. 23. [אמ' רב נחמן וכו'] *Ibid.* The word ואיצא or וקאל probably fell out.

Fol. 2 a, l. 3. Tosefta Baba ḥamma 6, 22. 23. There are only a few insignificant variants, as טוב before the second כעשה is omitted in the printed text. Z. has תבער instead of תעבר !

חמשים אמה בשעת הרוח שלש מאות אמה מעשה בערב שקפין האור
 יתר משלוש מאות אמה והזיק שוב מעשה שעברה הדלקה את הירדן
 שהיתה קשה במה דברים אמור בזמן שקפצה אבל אם היתה מסכסכת
 והולכת או שהיו עצים מצויים לה אפילו עד מיל הרי זה חייב עברה נהר
 10 או גדר או שלולית שהן רחבין שמנה אמות פטור: פאן אחרקת כרסא
 פאחרק פימא בין דלך אלה אלזרע או גרא או חמלאן מכתופה או גירה
 ממא פי אלעאדה וצעה הנאך פילום צארמהא קימה נמיע דלך¹ פאן
 אחרק פי כלאל דלך מא לים פי אלעאדה וצעה הנאך פלן ילום עוצה
 ואן אחרקת מנזלא מא פלילום קימה נמיע מא אחרקת פיה איצא לקי
 15 המדליק את הגדיש והיו בו כלים ר' יהודה אומ' משלם כל מה שבתוכו וחכמ'²
 אומ' אין משלם אילא גדיש של חטים או גדיש של שערים היה גדי כפות לו
 ונשרף עמו חייב עבד כפות לו וגדי סמיד לו ונשרף עמו פטור ומורים חכמ'
 לר' יהודה במדליק את הבירה שמשלם כל מה שבתוכה שכן דרך בני אדם להניח
 בבתים: וקאלו ר' יהודה סבר ישלם כל מה שבתוכו ואפילו ארץ אנרקי ורבנן
 20 סברי כלים הראיין לה אין שאין ראיין לה לא ומה אינהו מורגין וכלי בקר
 פאמא קל או השדה פמא מן רסמה או יוצע פי אלחקול מן כשב וקצב

1. 15. Baba ḥamma 61 b. Differs from the printed text in omitting
 ודלקו after בלים, and in inserting גדיש before של שעורים. Comp. Tosefta
 6, 24.

1. 17. Read סמיד.]

1. 19. *Ibid.* The phraseology, which is different from that of the printed
 text, seems to indicate that Ḥefes had another reading.

1. 21. . . . או . . . פמא] This sentence offers some difficulty. The
 most obvious solution is to emend או to ואן, and to take רסם in the sense of
custom, manner, for which Ḥefes usually employs the word עאדה (see above,
 ll. 12, 13). The translation would then be כל דבר שדרכו להניחו בשדות
 או רסמה as a gloss or parenthetical phrase. רסם would then have the
 meaning of *he wrote*. According to this explanation Ḥefes wishes to convey
 that the inclusion of wood and reeds is to be derived from the word או.
 As this explanation does not involve any change in the manuscript, I adopted
 it in my Hebrew translation, in spite of the fact that it is slightly awkward.
 [אלחקול] *Plots of land not for sowing.*

והנארה אלבני ומא נחא דלך פקימה דלך ילום אלצארם לקו' וכן סוד של ק[נים]
ושל קורות וכן מרביך של אבנים ושל צורות שהתקינו לסיד שנא' או הקמה

2 b

או האילו בשמע או השדה אפילו לחכה את העפר : והדה אלה אלשראיע
אלמצדר דברהא וגוב קבין אלארוש משרוח פיהא פפי ארין יש לא פי אל
נלות לקול רבא אדם באדם ואדם בשור אן נוכין אתו בבבל גרין דלך אדם
שהווק באדם ואדם שהווק בשור פאמא אן תמבן ראובן פי גיר ארין ישראל
5 פקבין מן שמעון אלארש אלואנב לה עליה פי ארין יש פאסתעדא שמעון לדלך
אלי אלחאכם לן יגב עלי אלחאכם אסתבראנה מן ראובן ורדה אלי שמעון
לקו' השתה דאמרת פלגו נווקא קנאסא האיי כלבא דאבל תמרי ושונארא
דאבל תרנולי משונה הוא ולא מגבין בבבל ואו תפש לא מפקין מיניה
וקאלו ההוא גברא דאלס ירא דינוקא אתא לקמיה דראבא אמ' לו לישמו
10 ליה כעברא היכי דאין רבא הכי והא רבא הוא דאמ' כל ששמן אתו כעבר
אין נוכין אתו בבבל אין הכי נמי ואילא שאני הכא דאקדים ניוק תפש

1. 22. *Mekilta d' R. Ishmael*, p. צ"ז (ed. Weiss). סוד should be changed into סור, as in that edition. See also *Ohalot* 3, 7.

1. 23. Both מרביך and מדבך are recorded. But נִרְבֵּךְ (Ezra 6. 4) would support the second reading.

Fol. 2b, l. 1. [או האילו] A corruption of אף האילן. On the other hand בשמע may be retained as a variant instead of the usual במשמע. [אלה] This may be a scribal error for אלט. It is also possible that one of the nine was not included in this category.

1. 2. [אלארוש] Plural of أَرْش, used here in the sense of *fine*.

1. 3. [אדם וכו'] Baba kamma 84 a. The printed text has twice נוקי before [אין] Read אין.

1. 7. *Ibid.*, 15 b. תמרי and תרנולי are obviously scribal errors for אמרי and תרנולי, respectively. On the other hand it appears that in the printed text the sentence והני מיילי ברברבי אבל בוטרי אורחיה הוא, which interrupts the logical sequence, is a later insertion, due, perhaps, to the Saboraim.

1. 9. *Ibid.*, 84 a. גברא is a corruption from תורא. The other variants seem to be genuine and are mostly superior to the readings of the printed text.

פאמא אן אסתעדא עלי שמעון פלילום אלחאבם שמעון ארצא ראובן ואלרצא
 פי דלך פגיר מחדוד כאלמחדוד מנה פי ארין יש' וחדה פי גיר ארין ישראל
 תוסט תקאת אהל אלמבאן חסב האלתי אלכצמין פי אלומאן אלאחצ'ר פאן
 תאבא שמעון ען קבול דלך פליחרם לדלך פאמא אן קבל שמעון ולם ירין ¹⁵
 ראובן פלישהד לשמעון ואן אלחמם ראובן אשכאין שמעון אלי ארין ישראל
 ליתחאכמא הנאך פלה דלך פאן תאבי שמעון ען דלך פליחרם לקו' ואי אַמ'
 אזמניה לדינא בהרא אַ לארין ישר' מומנונן ליה ואו לא אויל משתמינן ^{כותינן}
 ליה ובין כך ובין כך משמתין ליה לסלוקי הויקיה מדר' נתן דתניא ר' נתן
 אומ' מנין שלא יגדל אדם בלב רע בתוך ביתו ויעמיד סלם רעוע בתוך ²⁰
 ביתו חלמ' לזמ' ולא תשים דמים בביתך' חם שרחנא אלקסם
 אלז' אלמשתמל עלי אלט' אלשראיע אלמצדר דברהא'
 אלקסם אלז' יהוי יא' שריעה לים ילום פעלהא פי הרא אלומאן

3 a

לא פי ארין ישר' ולא פי גירא מנהא ט' שראיע אמרא ושריעתין נהיא'
 אלשריעה אלאולי מנה' תונב אדא כאן תור גיר מערופ באלנטא[ח]
 פנמה אנסאנא פמאת אלאנסאן לדלך אן ירגם אלתור ולא יובל מן לחמה וצאח[בה]
 פברי מן דלך בק' ובי יגח שור את איש וג' ואלנקל פתצמן באן אלצדם ואלע[ינ']

1. 12. The word אסתעדא evidently fell out after ראובן by mistake.

1. 14. [תוסט] This word is best taken as fifth conjugation, either imperfect third person singular feminine, ^{תוּסַט}, or infinitive ^{תוּסַט} = arbitration. The second conjugation is syntactically possible, and perhaps preferable, but is unknown in the sense required here. [תקאת] Plural of ^{חַלִּיפָה} (from ^{חַלִּיפָה}) a faithful man. For the ending comp. ^{חַלִּיפָה}.

1. 15. [פליחרם] The signification *he excommunicated* is recorded only by Dozy. It would thus not be unlikely that its occurrence here is due to Hebrew influence.

1. 16. [אשכאין] Infinitive fourth conjugation = *to cause to come, or to appear*. See Dozy.

1. 17. Baba ḡamma 15 b. The superfluous א after בהרא ought to be '. Instead of מומנונן read מומנין. The rest are genuine variants.

Fol. 3 a, l. 4. [ובי וגו'] Exod. 21. 28. After the y the paper is

5 ואלרבין ואלרפין מתסאווה פי חכם אלנניה לקו' כנוס שורך ואני אשמרנו
הזוק חייב הזיק פטור כנוס שורך ושמרו הזוק פטור הזיק ר' מאיר אומ'
משלם נזק שלם וחכמ' אומ' על השן ועל הרגל משלם נזק שלם על נניחה ועל
נניפה ועל נשוכה ועל רבוצה ועל בעוטה מועד' משלם נזק שלם ותם משלם
חצי נזק ואלקתל איצא פיגב עלי כל ואחד מן אלבהאים אלמפתרם מנהא ואלניר
10 מפתרם וברלך אנואע אלטאיר מתי פעל פי אלאנסאן מתל פעל אלתור אלנאמח
אלדי יגב לרלך קתלה לקו' לעשות שאר בהמה וחיה ועוף כיוצא בשור: ואן
באע הדא אלתור צאחבה או אקדסה קבל מחאכמתה עליה פדלך נאין פאמ[א]
פימא בער פלא לקו' שור תם שהמית עד שלא עמד בדין מכור והקדש[ו]
מוקדש שחטו ונותנו במתנה מה שעשה עשוי קדמו בעלי חובות והנהיגהו
15 בין חב עד שלא הזיק ובין הזיק עד שלא חב מה שעשה עשוי ומשעמד בדין
מכור אינו מכור הקדישו אינו הקדש שחטו ונותנו במתנה לא עשה כלום
קדמו בעלי חובות והנהיגהו בין חב עד שלא הזיק ובין הזיק עד שלא חב
לא עשה כלום לפי שאין משתלם אילא מנפו פאמא ליקרב לא ינוז בל יבאע
ויצרף תמנה פי מרמה אלבית או יחמל ויכרם ללקדש' וקו' את האיש או את
20 האשה פישמל אלממסוח ואלכנתי ואלאטפאל איצא לקו' אין לי אילא איש

torn off. As this word represents נשיכה, there can be no doubt that י' is to be supplied.

1. 5. [ואלרבין] A dialectic variant for the ordinary רָפְסִי. See Dozy. 'Tosefta Baba ḥamma 5, 8. The reading of Z., confusing חייב and פטור can scarcely be defended. See also Babli Baba ḥamma 48 b. The variants are insignificant.

1. 11. *Mekilta d' R. Sim'con b. Yoḥai*, p. 135 (ed. Hoffmann). See also p. 131. The former passage which practically agrees verbatim with this one applies to a different case. It is the latter which Iḥefes had in mind.

1. 13. Baba ḥamma 33 b. See Tosefta 5, 1. There are numerous variants in arrangement of the sentences as well as in individual words.

1. 19. מַרְמָה = [מרמה] ברק. which is an excellent equivalent for יחמל. In this manuscript ה and ח are quite different from each other, and the copyist no doubt wrote יחמל. But the sense demands יחמל = יחמל should be left alone. It seems that in the first manuscript of which the present one is a transcription ה, ח, and ת resembled one another.

1. 20. [אלממסוח] مَمْسُوح usually denotes castrated, but it no doubt

ואשה מנין לרבות קטן וקטנה וטומטום ואנדרגנוס תלמו לזמ את האיש
או את האשה? ואן כאן הדא אלתור קד עלם אן ינטח ועוד ליפעל דלך כתור
אלמקאמדין פנטח פקתל פלן יגב קתלה לקו' שור האצטדין אינו חייב מיתה
שנ' כי יגח ולא שיניחוהו' ואיצא שור האצטדין בשר לגבי מזבח טפני

3 b

שהוא מעוסה? וינצם אלי קוה קולה ולא יאכל את בשרו תחרים
אלאנתפאע בה איצא וכדלך אלקול איצא פי בעין אלמחרמאת אלמקול
פיהא לא יאכל לא תאכל לא יאכלו לא כלהא לקו' אמו ר' אלעזר כל מקום שנ'
לא יאכל לא תאכל לא יאכלו אחד איסור אכילה ואחד איסור הנאה במשמע
במשמע עד שיפרוט לך הכתוב בו כדרך שפרט לך הכתוב בנבלה לגר 5
אשר בשעריך ולגוי במכירה דתניא לא תאכלו כל נבלה ולרבות' דלדך שרוח
ותכניצאת נכתצר דכרהא לטולהא ובעל השור נקי פברי מן סאיר אל
תבאעאת ואלאנאע אלואגבה עלי רב אלתור אלמועד אעני אלמשהוד
עליה באלנטאח לא ילום גמיעהא רב אלתור אלגיר מערוף בדלך אעני
אלתם ואללאומה רב אלתור אלמועד כמסה מנהא אלתואמה שהאדה 10
אלשהוד עליה בדלך ומנהא ארי פיה דיה כאמלה וקתל אלתור אן כאן לזא

represents here אנדרגנוס = חַגְגִי = [ואלבנתי. טמטם. which stands for
Mekilta d' R. Simeon b. Yoḥai, p. 131. The ה in האיש and
האשה is to be deleted.

1. 23. [אלמקאמדין] = מַמְרֵי = gamblers. But as this word represents
here האצטדין, I translated it accordingly. The Hebrew equivalents would
be משחקים, מתערבים, מתחרים [שור וכו' Baba ḥamma 39 a.

1. 24. *Ibid.*, 41 a. The words אינו חייב מיתה ו are omitted here.

Fol. 3 b, l. 3. [לא כלהא] This is a further strengthening of בעין of the
preceding line: the prohibition of deriving any benefit applies only to some
cases, not to all. To read it as one word לאכלהא would yield no suitable sense.
[אמו ר' אלעזר וכו' Baba ḥamma 41 a, &c. One במשמע is to be deleted as
dittography. The variants are insignificant.

1. 11. [ארי אלך] The paying of ransom and the killing of the ox are
regarded as one point. See the passage from *Mekilta* quoted below.

פעלה קאצדא ואן יבן לרלך קאצדא פלן יבן קתלה כאלדייה * ומנהא אן
 יודי ללעבר ל מתקאלא ומנהא אקאמה עויף אלמתלוף * ומנהא אדי דלך *
 מן אנין מאלה אלנמיע ה אנואע : פאמא אלדי ילום רב אלחור אלניר מערוף
 15 באלנטאח פנועאן אלאל מנהמא אדי נצ' קימה אלמתלוף ואלמפסוד פאן
 נטח פקתל פלם יבן לנטחה אלמקתול קאצדא פלן יבן אן יקתל ואלב אן יבן
 אדאה דלך מן תמן דאתה לא מן כאין מאלה לקו' חמישה דברים בין יסור
 תם למועד מועד צריך עדים ותם אין צריך עדים מועד משלם את
 הכופר ותם אינו משלם את הכופר מועד משלם שלשים סלע ותם אינו נותן
 20 שלשים סלע מועד משלם נזק שלם ותם משלם חצי נזק מועד משלם מן
 העלייה ותם משלם מנופו ואיצא יש חייב בכפר ופטור מן המיתה יש
 שחייב במיתה ופטור מן הכפר יש שחייב בזה ובוה ויש פטור מזה
 ומזה מועד בכונה חייב בזה ובוה תם שלא בכונה פטור מזה ומזה
 מועד שלא בכונה חייב בכפר ופטור מן המיתה תם בכונה חייב במיתה
 25 ופטור מן הכפר * אלשריעה אלב מנה * תונב עלי מן לה תורא נטאח

4 a

מן אמס ומא קבל ונושר ליחפטה פלם יחפטה פקתל אנכאנא אן ירגם אל
 תור ויסתחק הו מותא אכתראמיא פאן אלום דיה אלמנטה פליעטא מיא

l. 12. [ואן יבן] The word לם was omitted between these two words by the copyist.

l. 14. [אנין] Read נאין. نائى مالى is the ordinary expression in Arabic for *cash*. There can therefore be no doubt that the author meant this word. See below, l. 17.

l. 15. [נצ'] All other abbreviations in this manuscript are either biblical words or frequently recurring terms like לך or וז. That נצף is abbreviated seems rather curious. Is it through the influence of colloquial Arabic where *nuṣṣ* = نَصَف?

l. 17. [כאין] Read נאין. See above, l. 14. *Mekilta*, p. 93 (ed. Weiss). The variants are insignificant.

l. 21. Baba ḥamma 44 b. Comp. Tosefta 4, 6. The four cases that are enumerated are not in the same order as in the printed text.

תבת עליה אלחראצי כק' ואם שור ננח הוא מתמול שלשום וג' אם כופר יו'
 ע' וג' או בן יג' וג' מתמול שלשום ירד בדלך תלתה איאם מתהאליה לקו' ר'
 5 יהירה אומ' מועד שהעידו בו שלשה ימים זה אחר זה ואיצא יום ואמיש
 ושלפניו: והועד בבעליו במחצר מן אלחאכם איצא לקו' העולם אין נעשה
 שור מועד עד שיעידוהו בפני הבעלים ובפני בית דין העידוהו בפני הבעלים
 בית ולא בפני בית דין בפני דין ולא בפני הבעלים אין נעשה שור מועד עד שיעידו
 עד שיעידוהו בפני בעלים ובפני בית דין העידוהו בפני שנים יום ראשון ובפני
 10 שנים יום השני ובפני שנים יום השלישי הרי אילו ג' עדיות והן עדות
 אחת ואמא ולא ישמרנו בעליו או לם יחפטה בדביחתה לקו' ר' אליעזר אומ'
 אין לו שמירה אילא סכין" ונס בעליו יומת פמותא אכתראמיא לקו' שור
 שנגח את האדם ומת מועד משלם את הכופר ותם פטור מן הכופר וזה
 וזה חיבין מיתה וכן בבן או בבת: וקאלו פי שרח דלך אתה אומ' בידי שמים
 15 או אינו אילא בידי אדם וכשהוא אומ' לא תקחו כופר לנפש רוצח וג' הא
 אין נותנין פדיון למומתין בידי אדם אבל נותנין פדיון למומתין בידי שמים
 וקאלו איצא אמ' חזקיה וכן תינא רבי חזקיה מות יומת המכה רוצח הוא על
 רציחתו אתה הורגו ואין אתה הורגו על רציחת שורו' פאמא אם כפר וישת
 עליו פאלואם בית דין אן ירצי כצמה לקו' יכול אם אמר לו מנה יהא נותן
 20 מנה ואם אמ' מאה מנה יהא נותן מאה מנה נאמר כן וישת עליו ונאמר להלן
 וישת מה וישת עליו האמור להלן בבית דין אף האמור כן בבית דין: ותצמן

Fol. 4 a, l. 3. Exod. 21. 29-31.

l. 4. Read מתתאליה = מִתְּתָאֲלִימָה, as the meaning demanded
 is consecutive. [ר' יהודה וכו'] Tosefta Baba ḥamma 2, 2. See also
 Babli 23 b.

l. 5. *Mekilta*, p. 93 (ed. Weiss).

l. 6. Tosefta Baba ḥamma 2, 2. See also Babli 24 a. Instead of העולם
 read לעולם.

l. 11. Read אן. [א' אליעזר וכו'] Baba ḥamma 45 b.

l. 12. *Ibid.*, 41 a.

l. 14. *Mekilta*, p. 92 (ed. Weiss).

l. 17. Sanhedrin 15 b.

l. 19. *Mekilta d' R. Simeon b. Yoḥai*, pp. 132 f. (ed. Hoffmann). The
 variants are insignificant.

l. 21. Read (first) וישת.

אלנקל באן ז פּעלאַ לם תּדכּרהא אלשריעה עקאב פּאעלהא ליסת אלינא בל
אללה תּכּרד מנהא מדהש צאחבה במא דהל לרלך עקלה לקו' המבעת את
חברו פטור מדיני אדם ודינו מסור לשמים ומנהא מנפּר בהימה צאחבה
25 פּדהלת לרלך לקו' המבעית בהמת חברו פטור מדיני אדם ודינו מסור
לשמים ' ומנהא מן ~~עלך בה~~ ילעק בהימה צאחבה טעאמא חארא או מרה

+ b

או קדרא או מודיא קתאלא לקו' הלעיטה חלית הרדופני וסם המות
וציאת התרנגלין פטור מדיני אדם ודינו מסור לשמים: ומנהא אלדי יבדל
רמאד פרה אדומה ומא ינצח מנהא לכוּן בעין אלצנאיע או שרב בעין
אלחיואנאא לקו' העושה מלאכה במי חטאת ובאפר חטאת והנותן מי חטאת
5 לפני בהמת חברו פטור מדיני אדם ודינו מסור לשמים ומנהא שליח בית דין
אמר בנלד מלקות ארבעים פנלד גלדא עניפא לקו' שליח בית דין שהבה ברשות

1. 23. Tosefta Baba kamma 6, 16. See Babli 56 a.

1. 25. *Ibid.*

Fol. 4 b, l. 1. [מודיא] This word may be either מוֹדִיָּא (fourth conjugation of מוֹדֵי he molested, harmed), or מוֹדִיָּא (fourth conjugation of מוֹדֵי he destroyed). It is, however, more likely that the former is intended here, as the latter is specifically connected with destroying as a result of vengeance. See Lane s. v. Moreover, no adjective or noun מוֹדֵי is otherwise known, whereas Dozy quotes מוֹדֵי *venincieux, mordant*. It seems that it is used here as a noun, and that קתאלא specifies it. I have translated it accordingly. Tosefta Baba kamma 6, 17.

1. 2. [יבדל] Either יִבְדִּיל he substitutes or יִבְזִיל he gives would suit the context.

1. 3. [שרב] This may be either the finite verb שָׂרַב he gave to drink, or infinitive שָׂרֵב. In the latter case it would be parallel to לכוּן.

1. 4. *Ibid.* The printed text is corrupt, and an entire sentence fell out through homoioteleuton. It should be emended in accordance with this quotation. See also Babli Baba kamma 56 a and Gitin 53 a.

1. 6. *Ibid.*

בית דין והזיק פטור מדיני אדם ודינו מסור לשמים ומנהא טביאא האדקא
טב באדן בית דין פאוהן פי דלך לקו' רופא אומן שרפא ברשות בית דין והזיק
פטור מדיני אדם וחייב בדיני שמים ומנהא צאחב בעין אלחכאם אמר
10 בתקטיע גנינא מיתא מן אחשא מראה לילא תמות לאגלה פגנא עליהא
פי גמלה דלך לקו' המהתך את העובר במעי אשה ברשות בית דין והזיק
פטור מדיני אדם ודינו מסור לשמים ומנהא תאלם גדארא לתסרה מנה בהאים
צאחבה: ומנהא ממיל זרע צאחבה או גירה מן נבאת לה נחו
נארא מחמיה פתיבכה או תחרקה ומנהא מסתאנר שהורא לישחדו ומנהא
15 כאתם שהאדה במא יגב לצאחבה ועליה לקו' אלו ר' יהוש' בן לוי ארבעה
דברים העשה אתם פטור מדיני אדם וחייב בדיני שמים ואילו הן הפורין גדר בפני
בהמת חברו והכופף קמתו של חברו בפני הדלקה והשובר עדי שקר לחברו להעד
והיודע עדות לחברו ואינו מגיד לו: ומנהא מרסל צרימא ידי אצם או אהוג
או צניר אלסן פאפסרת דלדך לקו' השולח את הבעירה ביד חרש שוטח
20 וקטן פטור מדיני אדם וחייב בדיני שמים: ומנהא מן אנכסר לה צרפא

1. 8. *Ibid.*

1. 9. [צאחב בעין אלחכאם] This is an awkward phrase. *Ḥākām* is usually the plural of *ḥākim* which denotes *judge* or *master*. This does not suit the context, as the phrase can scarcely represent *שליח בית דין*, for *בעין* would then be quite unnecessary, and it would be against the Arabic idiom. In colloquial Arabic *ḥākīm* is the ordinary word for *physician*, and it is possible that *ḥākīm* is used in that sense in some dialects (comp. *ḥāḍim* and *ḥadām* a *servant*). In that case, however, it would be required to delete *צאחב*. Moreover, it is likely that *ḥākīm* in that sense is a modern creation based on European *doctor*. The best solution appears to me to take the א of *חכאם* to represent a short *ā*. The phrase would then be *صَاحِبُ بَعْضِ الْعِلْمِ* = *master of one of the sciences*. Ḥefeş advisedly uses this expression, as special skill is required for this kind of operation.

1. 11. *Ibid.*

1. 13. [נחו] The text is rather obliterated; but there can be no doubt that *נחו* is correct.

1. 15. Baba ḥamma 55 b. The variants are insignificant.

1. 19. *Ibid.*, 59 b.

1. 20. [צרפא] *ṣarf* a *vessel*.

פי מסלך אלנאם פלם יצמה פימנע מן דלך אלחאדי בה לקו' נשברה כדו
ולא סלקה פטור מדיני אדם וג' ומנהא מן תנאפל ען שיל חיואן לה ואקעא
פלם ישילה לקו' נפלה גמלו ולא העמידה פטור מדיני אדם וג' ומנהא
מן תנאפל: אלאמר בקתל נפס בריה פקתלת לדלך לקו' תניא האומר
לשלוחו צא והרג את הנפש הוא חייב ושלוחו פטור שמאי אומ' משום חני 25

5 a

הנביא שולחו חייב שנ' ואתו הרגת בחרב בני עמך וג' מאי שלוחו חייב חייב בידי
שמים וקאל ר' שמעון פימא ילום אדא אפסד אלחיואן פי חיוו מאלבה ופי
חיוו גיר מאלבה ופי חיוו אלמשחרך פימא בין צאחב אלמויק ואלמוזק וגיר דלך
ארבעה דברים היה ר' שמעון בן אלעזר אומ' בנזקין כל מקום שיש רשות לניזק
5 ולא למזיק חייב בכל למזיק ולא לניזק פטור מן הכל לזה ולזה כגון חצר השותפין
והבקעה על השן והרגל פטור על נניחה ועל נניפה ועל נשיכה ועל רביצה ועל
בעיטה מועד משלם נזק שלם ותם משלם חצי נזק וכל מקום שאין רשות לא
לזה ולא לזה כגון חצר שאינה של שניהם על השן ועל הרגל משלם נזק שלם ועל
נניחה ועל נניפה ועל נשיכה ועל רביצה ועל בעיטה מועד משלם נזק שלם
10 ותם משלם חצי נזק ר' אלעזר ור' שמעון אומ' ר' טרפון אומ' על הכל משלם נזק
שלם וחכמי אומ' על השן ועל הרגל משלם נזק שלם ועל נניחה ועל נניפה ועל
נשיכה ועל רביצה ועל בעיטה מועד משלם נזק שלם ותם משלם חצי נזק ולדלך
תחריאת דברהא רבו' וממא ירל עלי אן הרין אלפריצתין גיר לאומה לנא פי

1. 21. *Ibid.*, 28 b.

1. 23. *Ibid.*

1. 24. *Kiddushin* 43 a. [תניא וכו'] *אֵלֶּמֶר* = *אֵלֶּמֶר*. Our text is corrupt and should be emended in accordance with printed edition.

Fol. 5 a, l. 1. *עמון* Read *עמך*.

1. 4. *Tosefta* Baba kamma 1, 9. See *Babli* 14 a.

1. 13. [תחריאת] The first ר is above the line in the manuscript. *תְּכַרְכֵּר* is second conjugation of *כָּרַח* he wrote accurately. See Lane and Dozy s. v. It seems that the author had the word *דיוקים* in mind. The reading *תְּחִירָאִת* warnings which is textually possible does not suit the context.

הדא אלזמאן קו' דיני נפשות בעשרים ושלשה הרבע והנרבע בעשרים
 15 ושלשה שנ' והרגת את האיש ואת הב' ואו' ואת הבהמה תהרגו שור הנסקל
 בעשרים ושלשה שנ' השור יסקל וגם בעליו יומת כמיתת הבעלים כן מיתת
 השור וקד אנקטע חכם אלנאם בגמיע דלך מנר לו סנה תבנת מן עמראן אלבית
 אלתאני לקו' ארבעים שנה קודם חרבן הבית גלתה לה סנדרי וישבה לה בחנות
 למאי הילכתא אמ' ר' יצחק בר אבדימי שלא דנו דיני נפשות וקאלו איצא
 20 ר' שילא נגדיה להווא נברא דבעל נזיה אול אבל ביה קירצה בי מלכא איכא
 נברא חד בהודאיי דקא דאין דינא כי לא נקוט חד מנא ממלכא אתויה
 לו' שילא אמרי ליה אמאי צערתי להאיי נברא דבעל חמאר אי הכי
 בר קטלא הוא אמ' להו מיכי חרוב בית המקדש לית לן רשותא למידן דיני
 נפשות' אלשריעה אלז מנה'
 25 תונב מתי אכטת גמאעה ישראל בסהו וגבי אמר ען עיון אלנוק פעמלו

5 b

ואחרה מן אלנואהי פאתמו ועמלו בהא או יקרב אלנוק אלי בבא אלמחצר
 תורא ללרכוה ותסנר שיוך אלגמאעה אידיהם עלי ראסה תם ירבח וינצח
 אלמאם אלממסוה מן דמה קבאלה אלסנף i מראר ויצע מנה עלי ארכאן
 מדבח אלכבור ויצב אלבאקי ענר אסאס מדבח אלצעידה ואן יקתר עלי אלמדבח

l. 14. Sanhedrin 2 a.

l. 18. Shabbat 15 a, Sanhedrin 41 a, 'Abodah zarah 8 b. The sentence about קנסות, which does not concern us here, has been omitted by the author. The other variants are insignificant.

l. 20. Berakot 58 a. Our text is much shorter than that of the printed edition, and the variants are interesting.

l. 21. Read [אתויה. הרמנא Read [חד מנא ביהודאיי Read [בהוראיי אתויה or איתיה.

l. 25. *וְגִבִּי* [וגבי] was hidden, concealed. In Sa'adya's translation of the Pentateuch *ונאב* was absent is used here. There can be no doubt that *וְגִבִּי* is the accurate rendering of Hebrew נעלם, and I therefore suspect that *ונאב* is a corruption of *וגבי*.

5 שחמה וכלאה וויאדה כבדה ויסתגפר ענהם ויגפר להם ויכרג נמיע אלתור
 כארג אלעסבר אלי מויע טאהר אלי מטרח אלרמאד פיהרק הנאך בק' ואם
 כל עדת ישראל יש' ונע' ונ' ונודעה החטאת ונ' וסמכו זקני העדה ונ' והביא הכהן ונ'
 וטבל הכהן ונ' ומן הדם ונ' ואת כל חלבו ונ' ועשה לפר ונ' והוציא את הפר ונ'
 יהיו קו' עדת ישראל ועיני הקהל וזקני העדה אלטאבקה אלעאליה מן אלחכאם לקו'
 10 עדת ישראל העדה המיוחדת בישראל ואיוו זו סנדרין גדולה היושבת בלשבת
 הנזית ואיצא פר שנא בו קהל ונאמר להלן קהל מה קהל האמור בית דין אף כן
 בית דין ואמא ונעלם דבר פנוא לא פרצא כאמלא לקו' ונעלם דבר ולא
 שחתעלם מצוה כלה וקאלו הורו בית דין לעקר את הגוף אמרו אין נדה
 בתורה אין שבת בתורה אין עבדה זרה בתורה הרי אילו פטורין הורו
 15 לקיים מקצתן ולבטל מקצתן הרי אילו חייבין כאיוצד אמרו יש בתורה
 אבל הבא על שומרת יום כנגד יום פטור יש שבת בתורה אבל המוציא
 מרשות היחיד לרשות הרבים פטור יש עבדה זרה בתורה אבל המשתתחה
 פטור הרי אילו חייבין שנ' ונעלם דבר דבר ולא כל הגוף הורו לבטל מקצת
 ולקיים מקצת הרי אילו חייבין כאיוצד יש דם בתורה אבל אין חייבין אילא
 20 על הדם הקרב לשמים יש חלב בתורה אבל אין חייבין אילא על חלב הקרב לשמים

1. 6. Lev. 4. 13-21.

1. 10. *Sifra Wayyikra*, section 4, 2 (p. 19 a, ed. Weiss).

1. 11. *Ibid.*, section 4, 15. The word פר belongs to the preceding sentence in the printed edition. [בו] Read [האמור] Insert [האמור] after this word.

1. 12. *Ibid.*, section 4, 7; Horayot 4 a.

1. 13. Horayot 3 b.

1. 14. [הזרו] A scribal error for הורו.

1. 15. [יש] Insert נדה after this word.

1. 18. [הורו] The word איצא must have fallen out here, for there is no place in which this forms a continuous passage. From הורו onwards is found in Tosefta Horayot 1, 7. In Z. the sentence about חלב is omitted through homoioteleuton.

1. 20. [לשמים] Z. has שלמים. But this seems to be a genuine variant, and the reading of our manuscript is perhaps preferable: the eating of fat and blood is forbidden in all cases, but the court erred and decided that this prohibition is to be restricted to sacrificial blood and fat. The confusion in Z. may have arisen through שלמים in connexion with פגול.

יש פגול בתורה אבל אין חייבין אילא על פגול שבשלמים הרי אילו חייבין וקו'
מבל מצות יי פפצל דלך ממא ליסת מצות יי לקו' מצות יי ולא מצות המלך
ולא מצות בית דין: וקו' אשר לא תעשינה מן אלתי מתי פעלת קצדא לא
סחוא ונב ענד אללה תעאלא עלי פאלהא קטעה^ע אעני כרת לקו' אין חייבין
25 אילא על דבר שזדונו כרת ועל שגגתו חטאת מן דלך העשה מלאכה ביום

6 a

הכיפורים והאבל חמין בפסח וערל שלא מל ואשבאההא ואלסמיכה
פתנב פי הדא אלקרנן ופי קרבן שעירי עבדה זרה איצא לא פי סואהא מן
קרבנות ציבור לקו' וכל קרבנות ציבור אין בהן סמיכה חוץ מפר הבא על כל
המצות ושעירי עבודה זרה ואיצא אלו ראבינא גמירי שתי סמיכות בציבור
5 וינב אן יכון בכלתי ידי אלסומך לקו' סמיכה ידו על הראש ובשתי ידיו ואלדי
ינב פעל דלך עליה ג מן צדר אלעדה לקו' עדה המיוחדים שבעדה וסמכו וקני
הרי שנים ואין בית דין שקול הרי שלשה וינב אן יכון ראבא אלתור מתונהא
פי רביחתי אלי גהא אלגרב לקו' בהן גדול היה עומד במזרח ופניו כלפי מערב
ואמא אלתור פאנה ירבח אלי גהא אלמדבח אלשמאליה לקו' לפני יי בצפון ואמא
10 מחוין למחנה פיקצתי כארג גמיע עסאברהם לקו' חוין לשלוש מחנות
אלשריעה אלד מנה

תוגב עלי שריף אכטא פפעל סחוא בעין אלמנהיאת פאתם לדלך תם עלם
בכטאה אן יאתי קרבאנה עתודא מן אלמעו צחיחא פיסנר ידיה עלי ראסה
וידבחה פי מוצע דבח אלצעירה ויאבד אלמאם מן דמה באצבעה ויצעה

1. 22. *Sifra*, section 4, 11.

1. 24. *Tosefta Horayot* 1, 8. See *Babli* 8 a.

Fol. 6 a, l. 3. *Menahot* 92 a, *Tosefta* 10, 9.

1. 4. *Ibid.*, 62 b, 88 a, 92 b.

1. 5. *Ibid.*, 93 a. The reading is slightly different.

1. 6. *Sanhedrin* 13 b, *Sifra Wayyikra*, chapter 6, 1. 2 (ed. Weiss, p. 19 b).

The passage is abridged, and R. Simeon's view is given anonymously.

1. 8. *Yoma* 35 b. See also *Tamid* 30 b. The variant is insignificant.

1. 9. *Sifra Wayyikra*, chapter 6, 4 (p. 19 b).

1. 10. *Ibid.*, 6, 8 (p. 19 c).

15 עלי ארכאן מרבח אלעעירה ובאקיה פיצבה ענד אפאסה ואן יקתר
 נמיע שחמה כשהם דבח אלסלאמה ויסתגפר ענה אלאמאם ען כטאה
 פיגפר לה בק' אשר נשיא יחט' וג' או הודע א' וג' וסמך ידו ולקח הכהן וג' ואת
 כל חלבו וג' אמא קו' נשיא פיקתצי מלכא לקו' איזה הוא נשיא זה **המהלך**
 המלך שנ' ועשה אחת מכל מצות יי' אלהיו ולהלן **וַיֵּצֵא** הוא אומ' למען ילמד
 20 ליראה את יי' אלהיו מה אלהיו האמור להלן נשיא שאין על נביו אילא יי' אלהיו
 אף אלהיו האמור כן נשיא שאין על נביו אילא יי' אלהיו פאמא או הודע אליו
 חטאתו פיקתצי מערפתה הו בכטאה לקו' הודע אליו ולא שיודיעוהו
 אחרים מנין אפילו אמרו לו שנים תלם לזמ' הודע אליו ולא שיאמרו לו אחרים
 והדא אלקרבאן פאנטא יגב עליה פי כונה מלכא לא קבל דלך לקו' נשיא יחטא
 25 כשחטא והוא נשיא ולא כשיחטא והוא הדיוט* פאמא מתי וגב עליה הדא

6 b

אלקרבאן פי כונה מלכא תם כלע מן מלכה ולם יכן קרבה פליקרבה מן
 בעד דלך לקו' כהן משיח שחטא ואחר כך עבר ממשיותו וכן הנשיא
 שחטא ואחר כך עבר מנדלתו משיח מביא פר ונשיא מביא שעיר
 פאמא אן אכטא אלכטא אלמקדם דכרה וקד ואל מלכה ענה פינב עליה
 5 קרבאן כואחד מן אלעאמה לקו' כהן משיח שעבר ממשיותו ואחר כך
 חטא וכן הנשיא שעבר מנדלתו ואחר כך חטא כהן משיח מביא פר
 והנשיא כהדיוט: אלשריעה אלה מנה* תונב עלי אחד

1. 17. [אשר וגו'] Lev. 4. 22-6. Insert וַיֵּצֵא after this word.

1. 18. The first part is in Horayot 10 a, and the second in 11 a. See also *Sifra Wayyikra*, section 5, 1 (p. 19 c). Perhaps וַיֵּצֵא fell out before ולהלן.

1. 22. *Sifra Wayyikra*, chapter 7, 1 (p. 20 a). See also Keritot 11 b. The part of the *Sifra* not necessary for our subject is omitted here. Otherwise the variants are insignificant.

1. 24. Horayot 10 a. See *Sifra*, section 5, 2 (p. 19 d). The variants are phraseological.

Fol. 6 b, l. 2. Horayot 9 b.

1. 5. *Ibid.* The word כהן is omitted before משיח in the printed text. But see Mishnah 3, 2.

עוואם.

אלעאמה אדא אכטא סהוא פפעל בעין אלמנהיאת ענהא תם ערף כטאה
 אן יאתי קרבאנה אנתי מן אלמעו או אלצאן ללדכוה פיסנד ידיה עלי ראסהא
 10 תם תרבה פי מוצע אלצעירה ויצע אלמאם מן דמהא באצבעה עלי ארכאן
 מדבה אלצעירה ויצב אלבאקי ענד אססה ותנוע שחמהא כמא נוע
 שחם קראבין אלסלאמה פיקתר עליה ויסתגפר לה אלמאם פיגפר
 לה כק' ואם נפש אחת תחטא בשגגה מעם הארץ וג' או הודע אליו חט' וג' וסמך
 את ידו וג' ולקח הכהן מרמה וג' ואת כל חלבה וג' ואם כבש וג' וסמך את ידו וג'
 15 ולקח הכהן מדם החט וג' ואת כל חלבו וג' הדא אלקרבן יגב עלי פקיה איצא
 עמל בפתיאה לא בפתיא בית דין פי דלך פאמא אלעאמל בפתיא בית דין
 סוא פי דלך פקיהא כאן או לא פקיהא וגוב אלקרבאן סאקט ענה לקו' תולה
 בעצמו חייב תולה בבית דין פטור כאיוצד הרו בית דין וידע אחר
 מהם שטעו או תלמיד ראוי להוראה כשמעון בן עזאי וכשמעון בן
 20 זומא והלך היחיד ועשה על פיהן יכול יהא חייב תלם לזב בעשותה תולה
 בעצמו חייב תולה בבית דין פטור ואיצא הורו בית דין לעבור על
 אחת מכל מצות האמורות בתורה והלך היחיד ועשה שגג על פיהם
 בין שעשו ועשה עמהם ובין שעשו ועשה אחריהם ובין שלא עשו ועשה

7 a

הרי זה פטור מפני שתלה בבית דין פאמא מעם הארץ פליכין אלמלך
 ואלמאם מן אלנפש אלמקול פיהא ואם נפש אחת תחטא ויכרהמא מן

1. 8. [אלעאמה] Neither of these words is crossed out, and it seems that the copyist did not make up his mind which was the right reading.

1. 9. [אלמעו] Sa'adya has מואעו. But ^{עוים}مؤا, which is a collective noun, is a more correct rendering of עוים.

1. 12. [שחם] In the text there is some space after this word. There are traces of an erasure. But no word is missing.

1. 13. Lev. 4. 27-35.

1. 17. *Sifra Wayyikra*, section 7, 8 (p. 21 d). See Horayot 2 b. The reading of our text יכול יהא חייב may be a scribal error for פטור, or may be a genuine variant involving a different interpretation of this Halakah. The other variants are certainly genuine.

1. 21. Horayot 2 a.

הרא לאתבם לקו' מעם הארין פרט לנשיא פאמא בעשותה אחת פיקתצ'י
 במאל אלפעל אלדי יגב עליה אלקרבאן לא גזו אלפעל פאמא אן תעאונו
 5 נמאעה פפעלו סהוא כליה אלפעל אלדי יגב עלי פאעלה אלקרבאן פלם יגב עלי
 כל ואחד מנהם קרבאן לדלך ולא עלי נמאעתהם איצא לקו' תניא המוציא כבר
 לרשות הרבים חייב הוציאואו שנים ר' מאיר מחייב ר' יהודה אומ' אם לא
 יכול אחד להוציאו והוציאו שנים חייבין ואם לאו פטורין ר' שמעון אומ'
 אף על פי שלא יכול אחד להוציאו והוציאו שנים פטורין מנא הני מילי
 10 דתנו רבנן בעשתה אחת בעשה כלה ולא בעשה מקצתה הא כאיזנר שנים
 אוחזין במלגו ולגזין בכדכר ושובטין בקולמוס וכותבין בקנה והוציאוהו
 לרשות הרבים יכול יהו חייבין תלמו לומ' בעשתה בענול של דבלה והוציאו
 לרשות הרבים בקורא ~~הקורא~~ והוציאוהו לרשות הרבים ר' יהודה אומ' אם
 לא יכול להוציאו והוציאו שנים חייבין ואם לאו פטורין ר' שמעון אומ'
 15 אף על פי שלא יכול אחד להוציאו והוציאו שנים פטורין לכך נאמר
 בעשתה יחיד שעשה חייב שנים שעשו פטורין וקו' פי הרא אלשרע מצות
 יי ואיצא או הודע אליו פמתסאויין פי אלואגב לקו' מצות יי או הודע אליו איצא
 אלמקולה פי שרה אלשריעתין אלמתקדמתין להרא אלשרע אלכאמס:
 אלשריעה אלז מנה: תונב עלי מן אבטא בפעל בעין אל
 20 מנהא ען פעלה ולם יעלם באנה קד אתם אן יאתי בכבש צחית מן אלננס
 לקרבאן אלאתם אלי אלאמאם ויסתנפר ענה ען סהוא פינפר לה כק' ואם נפיש
 כי תחטא ועש' ונ' והביא איל תמים זו ונ' אשם הוא ונ' תצמן אלנקל אן הרא
 אלכטא ואלסחו קד יברו מן אנסאן מא כאן בחצרתה נועין מן אלטעאם
 אחדהמא מחטור ואלאכר מבאח פאכל מן אחדהמא ולם ידרי מן אוהמא

Fol. 7 a, l. 3. *Ibid.*, 11 a. *Sifra Wayyikra*, section 7, 6 (p. 21 d).

l. 5. כָּל־הָעָם = totality, entirety.

l. 6. Shabbat 92 b. The variants prove that our author had a different text.

l. 11. *בכדכר* The readings *כרכר* and *כרכר* are recorded in the dictionaries, and now a third variant is added. *כרכר*, however, appears to be the most likely.

l. 13. *בקורא* Read *בקורה*. The following word was crossed out by the copyist.

l. 21. Lev. 5. 17-19.

l. 24. *אוהמא* Read *איהמא*.

7 b

אכל או כאנת זוגתה ואכתה ענדה ואתי אחרתהן ולם ידר איהו אתי או עמל
 עמלא פי זמאן מא ולם ידר הל דלך אלעמל פי זמאן אלברל כאן או פי זמאן אלחטר
 לקו' חלב ושמן לפניו אכל את אחר מהן ואין ידוע איזה מהן אכל אשתו ואחותו
 עמו בבית שנג באחת מהן ואין ידוע באיזה מהן שנג שבת ויום חול עשה
 5 מלאכה באחד מהן ואין ידוע באיזה מהן עשה מביא אשם תלוי פאמא אן
 אבל שיא סהוה יגב עלי אכלה עאמדיא כרת פיגב עליה מתי תחקק פעלה הרא
 קרבן חטאת ועלי שכה פי דלך קרבן אשם תלוי לקו' דבר שחייבין על זדונו כרת
 ועל שגנתו חטאת ספקו אשם תלוי ר' עקיבא אומ' האוכל חלב מביא חטאת
 בסלע ספק אכל ספק לא אכל מביא אשם תלוי בשני סלעים חתכה של חלב
 10 וחתכה של בשר נותר אכל את אחת מהן ואינו יודע איזו מהן אכל מביא חטא[ת]
 ואשם תלוי: פאן תחקק בעד אן אתי באלקרבאן אנה כאן קד אכטא או עלם
 אנה לם יכטי פיגב תאכיר דביחה אלחיואן אלמוהל ללקרבן ליעתרצה פי
 זמאן רעוה עיבא ליבאע לדלך וישתרא בתמנה חיואנא אכרא ליקרב
 קרבן נרבה לקו' המביא אשם תלוי ואחר כך נודע לו שחטא או נודע לו
 15 שלא חטא מה יעשה לו יצא וירעה בעדר דב ר' מאיר וחכמ' אומ' ירעה
 עד שיסתאב ויזכר ויפלו דמיו לנרבה: אלשריעה אלז מנה

Fol. 7 b, l. r. [אחרתהן] This is very likely a colloquial form. In classical Arabic we would prefer *أحداهن*. Read *איהן*.

1. 3. Keritot 17 b. See *Sifra Wayyikra*, section 12, 3 (p. 26 c).

1. 7. Three separate passages are quoted here. It is possible that the word *ואינא* fell out before *עקיבא* ר' and before *חתכה*. The first two passages occur in *Sifra Wayyikra*, sections 12, 6 and 12, 8 (p. 26 d), respectively, while the third is in *Tosefta Keritot* 3, 8. Z. has *חתיכה של חלב* וכו' פגול קודש וחתכה של חלב וכו'.

1. 12. *אלמוהל*. This may represent *الموهل* that is worthy or fit, a meaning which is not quite suitable. As ה, ח, and ת are not infrequently confounded in this manuscript, I should like to suggest the reading *אלמותל* = *الموتل* prepared, arranged. Comp. Freytag *أَتَلَّ* sanctificavit opes suas data Deo ex lege portione debita.

1. 14. Keritot 23 b. The few additional words in our text are explanatory.

תונב עלי גמאעה סהת פי שי מן עבדה זרה אן יאתו אלי אלמאם
 בתור ללצעידה והדיתה ומזאנה כמא ינב ועתוד מן אלמעז ללדכוה
 ויסתנפר להם פינפר להם כק' וכי תשנו ולא תעשו וג' את צוה יי' וג' והיה
 20 אם מעיני העד' וג' וכפר הכהן וג' ונסלח לכל עדת וג' קד דברנא פי שרה
 ואם כל עדת יש' וג' אן דלך משאר בה אלי סנדרון ואלאשאר בה פי הרה אלשריע[ה]
 פאליהם איצא לקו' נאמר כן עדה ונא להלן עדה מה עדה האמורה להלן כלם
 ראויין להוראה אף עדה האמורה כן עד שיהיו כלם ראויין להוראה ויהי[א]
 אלסהו פפי שי מן עבדה זרה דליל דלך קול' אתה אומ' בעבדה זרה הכתוב[ב]

8 a

מדבר או אינו אילא באחת מכל המצות שבתורה תלמ' לומ' והיה אם
 מעיני העדה נע' וג' ייחד הכתוב מצוה זו ואמרה בפני עצמה והיו זו
 עבדה זרה¹ אלשריעה אלף מנה תונב עלי שבין
 [א]כטא סהוא פי שי מן עבדה זרה אן יקרב שאה אבנת סנתהא ללדכוה
 5 [וי]סתנפר ענה אלמאם וינפר לה כק' ואם נפש אחת תחטא בשגגה וג'
 [י]כפר הכהן על הנפש הש' ואלדליל עלי אן הדא אלסהו מן אלסאהי גרי פי
 עבדה זרה קו' ואם נפש אחת תחטא בש' עבדה זרה היתה בכלל כל
 המצות שהיחיד מביא עליה כשבה או שעירה נשיא שעיר משיח ובית
 [ד]ין מביאין פר הרי הכתוב מוציאה מכללה להחמיר עליה ולדין בקבעה
 10 שיהא היחיד נשיא ומשיח מביאין עליה עז בת שנתה לחטאת לכך נאמרה

l. 19. Num. 15. 22-6. The words כל אשר (ver. 23) are omitted through oversight.

l. 21. [סנדרין] Read סנדרין.

l. 22. Horayot 4 b.

l. 24. *Sifre Numbers*, section III (p. 31 b, ed. Friedmann). The variants are phraseological.

Fol. 8 a, l. 5. Num. 15. 27, 28.

l. 7. *Sifre Numbers*, section III 2 (p. 32 b).

l. 9. [מכללה] Read מכללם.

l. 10. [שיהא] Read שיהיו.

[פ]ר[שה]: תמת שרוא אלט אלשראיע אלתי הי אמר מן גמלה אליא אל
 [ש]ריעה אלמצדר דברהא פי הדא אלפצל דברהא: אלשריעה אלט
 תאמר אי רנל סרק ולם ימכנה אן ירד דלך עלי צאחבה וצעפה
 [א]ו קימה דלך אן יבאע ליודי אלי אלמסרוק מנה דלך כק' שלם ישלם ואם אין
 15 ו' קר שרחנא הדא אלשריעה שרחא שאפיא פי טי שרחנא כי תקנה
 [ע]בר עב' פי אול אלפצל אלב נסתנני ען דבר שי מנה ההנא: פאמא אלקסם
 [אל]תאני מנה אלמתצמן שריעתין נהיא אלאולי מנהא ואלב איצא תנהא
 [אל]מאמור באחצאר עשירית האיפה אלמדכורה פי פצל ונפש כי תחטא
 [יש]מ' וג' אן יצב עליהא דהנא ואן יגעל עליהא לבאנא כק' לא ישים עליה שמן
 20 [ול]א יתן עליה לבנה תצמן אלנקל באנה ואן כאן לא יגוז ללאמאם אן יצב עלי
 [ה]דא אלקרבהאן לא דהן ולא לבאן קבל תקריבה פיגוז אן יצע אלדהן עליהא
 [מ]ן בעד אן יקרב מא יגב תקריבה ואן וצע עליהא לבאנא מן קבל אן
 קרבהא פגאזו אן יקרב מא יגב תקריבה מנהא בעד אכד אללכונה לק' יכול
 אם נתן לבונה פסל תל לומ' כי חטאת ה' מפני מה מכשיר לבונה מפני שחוא

l. 11. [פ]רשה Insert ון after this word. The sentence from תמת to the second דברה is misplaced. It should obviously be put after ההנא (l. 16), at the end of the ninth precept.

l. 12. [דברהא] The second דברהא is redundant, and should be deleted. It seems too awkward to consider the whole phrase פי הדא אלפצל דברהא as an explanatory gloss.

l. 14. Exod. 22. 2. This precept is given here, perhaps, on account of Lev. 5. 20-26. He does not quote the latter verses here, as they were probably fully discussed in the second book.

l. 15. [שאפיא] The text is not quite legible here. פ' are joined together in a manner which is rather unusual in this manuscript. At first sight one is inclined to read שאפוא. But I have no hesitation in reading שאפיא, as the former gives no sense. For the expression comp. Khazraji's *Pearl-strings*, 297, 2; 442, 8. Ordinarily شَفَى means *he cured*; but the secondary signification *he satisfied* is given by Dozy. See also כלאם שאף (Abu'l-Barakāt Hibat Allāh's *Commentary on Ecclesiastes*, specimen, ed. Poznański, *ZfHB.*, XVI, p. 33, l. 4, text). The St. Petersburg MS. has כאף. But there is no doubt that שאף, being the rarer word, is the correct reading.

l. 19. Lev. 5. 11.

l. 23. *Sifra Wayyikra*, chapter 19, 5 (p. 25 a). See Menaḥot 59 b. The clauses unnecessary in this connexion are omitted.

יכול ללקטם ופוסל בשמן שאין יכול ללקטן וקאלו פי אלשמן איצא עליה אין
נותן. נותן הוא על שיריה תם שרחנא אלקסם אלד אלמשתמל עלי
אליא אלשריעה אלמצדר דברהא

אלפצל אלד מן אלשריע תאליף ראם אלכל חפין בן יצליח פי אלקראבין אלמ[פעולה]
5 תטועא ופי מנע תקריב דלך עלי אלמזבח מן לים מן ולד הרון ופי אלנדור [פי]
אלאמואל וקים אלנפוס וגיר דלך יהיו לו שריעה תנקסם אקסאם תלתה
אלאול מנהא יתצמן יח שריעה פי אלקראבין אלתי מן אלחיוואנא לא יל[ום]
פעלהא פי הדא אלזמאן תנקסם קסמין אלאול מנהמא יתצמן י שראיע
אמרא אלב יתצמן ח שראיע נהיא אלקסם אלב יתצמן י שראיע פי אל[קראבין]
10 אלתי מן אלבר וגיר דלך לא ילום פעלהא פי הדא אלזמאן תנקסם קסמין
אלאול מנהמא יתצמן ה שראיע אמרא אלב יתצמן שריעתין נהיא
אלקסם אלז יתצמן יא שריעה פי אלאמואל וקים אלנפוס וגירה תנקסם
קסמין לא ילום פעלהא פי הדא אלזמאן אלאול מנהמא יתצמן ה שראיע
ה מנהא אמרא ותלתה נהיא אלתאני יתצמן ז שראיע אואמר ילום
15 פעלהא פי כל זמאן ומכאן אלגמיע לו שריעה שרת אלקסם אלאול

[עליה וגו' ללקטו Read ללקטן. ללקטם Read ללקטם. Fol. 8 b, l. i. *Sifra Wayyikra*, chapter 19, 5 (p. 25 a). The reading is slightly different.

l. 4. [אלמפעולה] This leaf which is the last of the fascicle is pasted to the following fascicle, and the words at the end of the lines are therefore obliterated. פ and ל are fairly visible.

l. 5. [תטועא] = *تَطَوَّعًا* doing something which is not obligatory. The preceding part dealt with sacrifices which one was obliged to bring in order to expiate his sins; but in the present book the author treats of free-will offerings.

l. 7. [יתצמן] As a rule צ which = *ض* has a diacritical point. This word, however, forms an exception.

l. 8. [קסמין קסם] here means a sub-section.

l. 10. [אלבר] The curved line over the ב evidently stands for a damma, which differentiates this word from *بَر* and *بَر*.

l. 13. The clause לא ילום—אלזמאן should be transposed after נהיא in the following line. See below, fol. 15 b, ll. 4 f.

אלשריעה אלאולי מן אלי אלשראיע אלתי הי אמרא^א
 תאמר אלמתנפל בתקריב צעידה מן אלבקר אן יאתי בה דכרא צחיחא לא עיב
 פיה אלי כבא אלמחצר תם יסנר ידיה עלי ראסה ליגפר לה^א תם ידבה וירש מן
 דמה מסתדירא עלי אלמדבה אלדי ענר באב כבא אלמחצר תם יסלך ויעצ^א]
 תם יחרק באלנאר עלי אלמדבה בער גסל אלנוף מנה ואלאכארע כק^א אם
 עלה קרבנו מן הבק^א וג^א וסמך את יד^א וג^א ושהט וג^א והפשיט וג^א ונתנו וג^א וערכו וג^א
 וקרבו וכרעו וג^א קולה אל פתח וג^א ישיר אלי חצורה תקריבה קרבאנה ש^א]
 אם אבא לקו^א יקריב אתו מלמד שכופין אתו יכול על כרחו תלם לומ לרצ^א]
 ה^א

9 a

ב

הא כאיוצר כופין אתו עד שיאמר רוצה אני וקו^א וסמך ידו על ראש הפ^א וג^א
 פי אלמוצע אלמכצין לא ניר לקו^א במקום שסומכין שוהטין וקו^א ונרצה
 לו פנפראן אלתנאוז עלי מצות עשה אלתי לם ידבר לנא אלכתאב עקובה
 מתנאוזהא ודלך מתל ועשית מעקה ועשו להם ציצית ואשבאההמא :
 5 ונפראן אלתנאוז עלי מצות לא תעשה אלתי ימכן תלאפיהא פתלופית מתל
 לא תקה האם על הבנים וג^א שלח תשל^א וג^א ולא תותירו ממ^א עד ב וג^א ואשבאההמ^א
 לקו^א פי דלך מלמד שהמקום נרצה לו על מה המקום נרצה לו אם תאמר על
 דברים שחיבין עליהן מיתת בית דין מיתה בירי שמים כרת בירי שמים

l. 19. [ויעצ^א] The last י is faintly visible. The word is a denominative of ^אעצ a member, limb. The indicative is meant here, unless we assume that the final י is a mere *mater lectionis*. Sa'adya has יעץ which is the jussive.

l. 20. Lev. i. 3-9.

l. 22. [תקריבה] The ה makes the construction very cumbersome, and should be deleted. [שא] The ש is faintly visible, while the א is entirely torn off. But there can be no doubt that ש^א is right.

l. 23. *Sifra Wayyikra*, section 3, 15 (p. 5 c), *Ḳiddushin* 50 a, &c.

Fol. 9 a, l. 2. *Menahot* 93 a, *Sifra Wayyikra*, section 4, 1 (p. 6 a).

l. 4. [ועשו וכו'] Deut. 22. 8. Num. 15. 38.

l. 6. [לא תקה וכו'] Deut. 22. 6, 7. Exod. 12. 10.

l. 7. *Sifra Wayyikra*, chapter 4, 8 (p. 5 d). The use of נרצה and מרצה, especially the former, of our text is better than רוצה of the printed edition.

מלקות ארבעים חטאות ואישמות הרי ענין אמור על מה המקום מרצה
 10 על מצות עשה ועל מצות לא תעשה שיש בהם קום עשה¹ ואלנפראן פיהם
 מע אלאקראר תם אלאקלאע לקו' פי דלך ופי אלסמיכה איצא כאיוצד כומך
 20 זבח עומד בצפון ופניו במערב ומניה שתי ידיו בין שתי קרניו של זבח
 ולא היה מניה ידיו על גבי החזה ולא היה מניה ידיו זו על זו ולא היה דבר חוצין
 בין ידים לקרנות ומתורה עליו עון עבירה על חטאת עון חטאת על אישם
 15 עון אשמה על עולה עון לקט ושכחה ופיאה שאין להם ודוי דברי ר' יוסי
 הנלילי אומ' לו ר' עקיבה על מה עולה מכפרת דברים שיש בהן עונש אמור
 לא תעשה שלהן אמורה על מה עולה מכפרת על מצות עשה ועל מצות
 לא תעשה שיש בה קום עשה² ובקולה ושחט קולא מהמלא אנאז לכהן
 ונירה איצא אן ירבח לקו' שחיטה בכל כשרה בנישים ובזרים ובעבדים
 20 ובטמאים ואפילו בקדשי קדשים ובלבד שלא יהיו הטמאים נונין
 בבשר³ פאמא והקריבו בני אהרן הכהנים אה פמכצוזה באלאימה לא
 נירדם לקו' מקבלה והלך מצות כהנה אבל שחיטה כשרה בכל אדם וקו'
 סביב יקתצי רש אדם עלי ואויה אלמדבח אלמנאורה ללרוב ואלננוב וברלך
 עלי אלזאויה אלמנאורה ללשמאל ואלשרק לקו' שתי מהנת שהן ארבע ואיצא

9 b

יכול יקיפנו כחוט תלם לומ וורקו הא כאיוצד הפסיק ארבע מיתנות סביב
 וקו' ונתח אותו לנתחיו פאעצא מכצוזה והו אלראם ואלידין ואלננובין ואלענק

1. 11. Removal (infinitive fourth conjugation of ^{רָמַע}). If
 evidently refers to the removal of the hands from the sacrifice. [כאיוצד וכו']
 Tosefta Menaḥot 10. 12; see also Babli Yoma 36 a. A comparison of these
 two passages with our text will prove the superiority of the latter, where,
 however, we have to insert the clause במערב ופניו במערב which has
 been omitted through homoioteleuton.

1. 19. Zebaḥim 31 b, *Sifra Wayyikra*, section 4, 2 (p. 6 a). Slight variants
 in phraseology.

1. 22. *Sifra, ibid.*, Zebaḥim 32 a. Slight difference in phraseology.

1. 24. Zebaḥim 53 b, *Sifra Wayyikra*, section 4, 9 (p. 6 c).

Fol. 9 b, l. 1. *Sifra, ibid.* See Zebaḥim, *ibid.* Our text differs at the

ואלרגלין ואלקין ואלמתן ואלגוף ואלפכרין לקו' פי דלך חותך את הראש ונותן
למי שזכה בו חותך את הכרעים וג' חותך את הידים עלה לרגל הימנית **חוצה**
5 חותכה וג' נטל את הקרבים וג' נטל את החזה וג' עלה לדופן הימנית וג' בא לו
לגרה וג' בא לו לדופן השמאלית וג' בא לו לעוקן וג' נטל רגל השמאלית וג'
וערבו אל האש איהא כאן מא סוא כשב ויתון וכרם לקו' כל העצים כשרים
חיון משל זית ושל גפן אבל באלו רגילים במרכות של תאנה ושל אגוז ושל עין
שמך אלשריעה אלל מנה תאמר אלמתנפל בתקריב צעידה
10 מן אלגנס אן יאתי בה דכרא צחיח לא עיב פיה תם ידבה אלי נאנב אלמדבה
שמאלא בין ידי אללה וירש בני הרון אלאימה דמה עלי אלמדבה מסדירא תם יעצי
תם יחרק בעד גסל אלגוף מנה ואלאכראע כק' ואם מן הצאן קר' וג' וישחט וג' ונתח
אתו וג' והקרב והכרעים וג' ונתח פאעצא מכצוצה חסב מא תקדם בה
שרחנא פי אלשריעה אלתי קבל הדה אלשריעה תם אעצארהא עלי מא הי
15 עליה עלי אלמדבה לקו' לנתחיו אין נתחים לנתחיהם
אלשריעה אלל מנה תאמר אלמתנפל בתקריב צעידה
מן אלטאיר אן יבון דלך שפאנין או פראך חמאם ואן יקדמה אלמאם אלי אלמדבה
תם יחו ראסה ויקתרה עלי אלמדבה וימצו דמה עלי חאיט אלמדבה עלי תם ינוע
מנה אלחוצלה ואלקאנסה ויטרח דלך לזיק אלמדבה שרקיא מוצע אלרמאד

end from the printed edition ; but the Yalkuṭ proves that the original reading is here preserved.

1. 3. Tamid 31 a.

1. 5. Instead of **נטל את החזה** the printed edition has **נקב וג'**.

1. 7. *Ibid.*, 29 a, *Sifra Wayyikra*, chapter 6, 4 (p. 7 b).

1. 8. **במרכיות** Printed editions have **במרכות**.

1. 12. **ואלאכראע** Fol. 8 b, l. 20, Hefeş uses **אלאכראע** which is the more regular plural of **כְּרָע**. **ואם וכו'** Lev. i. 10-13.

1. 15. *Sifra Wayyikra*, chapter 7, 3 (p. 8 a).

1. 18. **וימצו** The root **ממ** in the second conjugation is given in *Muḥlī al-Muḥlī* and by Dozy in the sense of *draining to the last drop*. As the **י** is clear in our text, we may suppose that the first conjugation also existed, though it is quite possible that the author wrote **י**. In Sa'adya's translation there is **ימצוי** which is obviously a mistake for **ימצוי**. Derenbourg's note there is erroneous.

1. 19. **אלחוצלה** **חֹצֶלָה** = gizzard. Mishnic **קירקבן**. That is how Sa'adya

20 תם יפצך גנאחיה ולא יפרזהא ויקתרהא עלי אלמדבח כך ואם מן העוף על
 ק' וג' והקריבו הכהן וג' והסיר את מ' ושסע אתו בכ' וג' אפרנא מן קולה והקריב
 מן התורים או מן בני היונה אק' אן כבאר אלשפאנין וצנאר אלחמאם יצלחון
 ללקראבין לא צ' דלך ואלחד פי זמאן אלשפאנין לתצלח ללקראבין פמנד כמאל
 אצפראר לונהא ואלפראך פמנד תבתדי אצפראר לונהא לא תצלח
 25 ללקראבין לקו' מן התורים ולא כל התרים מן בני היונה ולא כל בני היונה פרט

IO a

לתחלת הציהוב שבוה ושבוה אימתי תורין כשרין משיצהיבו אימתי בני
 יונה פסולין כשיצהיבו פאמא ומלק את ראשו פיקתצי חז מפצל אלכרוה
 ואלתקוה תם אלחלקום ואלמרי גמיע דלך בטפרה ואן יפעל אלראם מן אלב[דן]
 לקו' מולק בעפורן ואינו מבדיל וכשם ששחיתתה אחד או רוב אחד כך
 5 מליקתה אחד או רוב אחד וכשם שמולק בחטאת העוף כך הוא מולק
 בעולת העוף אילא שבעלת העוף היה מבדיל * ולצעובה הרה אלצנאעה
 קאלו וזו מעבורת קשות שבמקדש ואלתוספה פקאלת כאיוצר מולקין

translates מראה. This is the equivalent of נצה. Sa'adya also gives the same translation. But this word is more correctly spelt قَانِصَةً. *a side, border*. See Dozy. זק in Sa'adya's translation is incorrect.

l. 20. יפצך Read יפצל. [ואם וכו'] Lev. i. 14-17.

l. 21. [ושסע] Insert ונ before this word.

l. 25. Hullin 22 b, *Sifra Wayyikra*, chapter 8, 5 (p. 8 c).

Fol. 10 a, l. 1. [משיצהיבו] The printed editions have משיצהיבו here and משיצהיבו in the second place. It is, however, evident that our text has preserved the original reading. The Baraita gives one limit for both: when they become yellow. The כ and כ admirably indicate the *termini a quo* and *ad quem*, respectively.

1. 2. מַפְצֵל אֶלְכֶרֶז = [מפצל אלכרוה].

1. 3. [ואלמרי] מַרְי or מַרְי = the gullet.

1. 4. *Résumé* of Tosefta Zebahim 7, 4. 8. Perhaps the word ונ fell out in a few places.

1. 7. [באיוצר וכו'] Zebahim 64 b, &c. Tosefta Zebahim 7. 4. Insignificant variants.

חטאת העוף נותן שני נפיה בין שני אצבעותיו שתי רגליה בין שתי אצבעותיו
 והיה מותח צוארה על גבי אצבעותיו והיה מולק בצפורן ממול ערפה ואינו
 10 מבריל והזה מודמה על קיר המזבח וכשם ששחיטתה אחד או רוב אחד כך
 מליקתה אחד או רוב אחד : אלשריעה אלך מנה
 תאמר אן נחמל צואעדנא ודבאיחנא ועשורנא ורפאינא ונדרנא ותברענא
 ובבור בקרנא ונגמנא אלי אלמוצע אלכאין בק' לשכנו תדרשו ובאת שמה
 והבאתם שמה ע' וג' קו' מעשרותיכם יקתצי אלעשר מן אלבהאים ואלבר
 15 לקו' בשני מעשרות הכתוב מדבר אחד מעשר בהמה ואחד מעשר
 דגן' אלשריעה אלה מנה' תאמר אן יחמל צאחב קרבאן
 אלסלאמה עלי ידיה אלשחם מנהא מע אלזור איצא ליחרכה בין ירי אלה תם
 יקתר אלשחם עלי אלמדבח בק' ידיו תביאנה את אש' וג' והקטיר כהן וג' ואלנקל
 פתצמן אן אלכהן כאן יצע ידיה תחת יד צאחב אלקרבאן פי וקת אלתחרין
 20 לקו' כהן מניח ידו תחת יד הבעלים פאמא אלתחרין פאלי גהאת
 מכתלפה לאסבאב דכרוהא לקו' מוליך מביא מעלה ומוריד וקאלו
 אפ' חיה בר אבא אפ' יוחנן מוליך ומביא למי שהרוחות שלו
 מעלה ומוריד למי שהשמים והארץ שלו במערבא מתני הכי אפ'
 ח' חמא בר עקבא אפ' יוסי בר חנינה מוליך ומביא כדי לעצור רוחות

10 b

רעות מעלה ומביא כדי לעצר טללים רעים : אלשריעה אלו מנה'
 תאמר אן יובד מן אלגנם אלצאן אלמקרב סלאמה ליתה ותרבה וסאיר

l. 13. Deut. 12. 5, 6.

l. 15. *Sifre Deuteronomy*, section 68 (p. 88 b), Bekerot 53 a.

l. 18. Lev. 7. 30, 31.

l. 20. Menaḥot 61 b. See *Sifra Šaw*, section 11, 3 (p. 39 c). In the latter the word ידו fell out.

l. 21. Menaḥot 61 a.

l. 22. *Ibid.*, 62 a.

Fol. 10 b, l. 2. [אלצאן] This word can hardly be in apposition to אלגנם. We should perhaps prefix ו or insert אא. [אלמקרב] This is passive participle qualifying אלצאן. [ליתה] = *its fat*. Dictionaries do not give such

אלשחם אלדי עלי אלנוף וכלותיה ואלשחם אלדי עליהמא ועלי אלאחישא
 ואלזואדה מן אלכבר פיקתר דלך עלי אלמדבח בק' והקריב מובח השלם וג'
 5 ואת שתי הכליות וג' והקטירו הכהן המז' וג' או אעתקד דאבח קרבאן
 שלמים אנה לא שלמים בל בכור ומעשר פקר אפסדה אעתקאדה דלך ואן
 אעתקד פי חאל דביחתה בכור ומעשר אן דלך שלמים לם יפסדהא ~~אעתק~~
 אעתקאדה דלך לקו' הבכור והמעשר ששחטן לשום שלמים כשרין
 ושלמים ששחטן לשום ואן תכלף איצא צאחבה ען אפסאד ידיה עליה
 10 פלא יפסדה לקו' השלמים אף על פי שלא סמך עליהן'
 אלשריעה אלז מנה' תאמר אן יקרב מע אלחמלאן ואלכבאש ואל
 רתאת אלתי הי עולות ונדרים ונדבות ונירהא סמרא וכמרא ודהנא לכל
 חמל עשרון יכון תשכ דרהם ומן אלכמר רבע קסט יכון ש' דרהם ומן אלדהן
 מתל אלכמר וללכבש עשרין סמר ותלת קסט כמרא ומתל אלכמר דהנא
 15 וללרת ז עשור סמר ונצף קסט כמרא ומתל אלכמר דהנא בק' ועשיתם

a noun in this sense; but as there is an adjective *fat* ^{مَلِيَّةٌ}, we should have no hesitation in considering *liṭ* ^{لَيْت} as a genuine noun. [ותרבה] *ṭarḇ* is an excellent equivalent for the phrase *את הקרב*. Sa'adya translates every word separately.

l. 3. [וכלותיה] Hefes uses *ḳlōṭ* ^{كَلَوَتْ} for the more usual *ḳlīṭ* ^{كَلِيَّةٌ}.

l. 4. Lev. 3. 9-11.

l. 5. [אן] Read אן.

l. 8. Zebaḥim 11 b. The end of the quotation is omitted by mistake.

l. 9. [ען] The text is not quite plain, but there can be no doubt that ען is correct.

l. 10. *Sifra Wayyikra*, section 14, 1 (p. 13 d).

l. 12. [רתאת] *ṭat* plural *ṭat* ^{رُتَاتٌ} usually denotes *hog*. In the sense of *bullock* or *steer* it is found only among Jewish writers. See Dozy. It is remarkable that such an ambiguous word should be employed in connexion with sacrifices. It is therefore best to assume that in the dialect spoken by these Jewish writers *ṭat* signified only *bullock* or *steer*. In Sa'adya's translation of Lev. 4. 3 and other passages this word is written *ṭat* ^{رَتْ}, as if *ṭat*. But the latter root denotes *was lean, meagre*. The correct reading is thus obviously *ṭat*. The plural *ṭat* ^{رَاتَات} is nowhere else recorded.

l. 13. [עשרון] This is the Hebrew term. In the other cases עשר is Arabic *ʿashr* ^{عَشْرٌ}.

l. 15. Num. 15. 3-10. In the last verse *תקריב* is omitted by mistake

אשה לוי עלה או זבח וג' והקריב המקריב קר' וג' ויין לנסך רביעית ה' וג' או לאיל
תעשה מ' וג' ויין לנסך של' וג' וכי תעשה בן בק' ע' וג' והקריב על בן הב' וג' ויין
לנסך חצי ההין וג' אלנסכים לא תגב לסאיר מא דכרנאה בל לבעצה וקאל רבֹּת
שומע אני כל הקרב לאשים יטען נסכים תלמ' לזמ' עולה אין לי אילא עולה
20 מנין לרבוב את השלמים תלמ' לזמ' זבח משמע מביא את אילו ומביא את
חטאת ואשם תלמ' לזמ' לפלא נדר או בנדבה לא אמרתי קדשים הבאים
בנדר ובנדבה משמע מוציא את אילו ומוציא את עולה חובה הבאה
ברגלים כשהוא אומ' או במועדיכם להביא את עולה חובה הבאה ברגלים
משמע מביא את עולה חובה הבאה ברגלים ומביא את חטאת חובה הבאה
25 ברגלים תלמ' לזמ' וכי תעשה בן בקר עלה או זבח בן בקר היה בכלל יצא

II a

מוצא מן הכלל ולימד על הכלל מה בין הבקר שהוא בא בנדר ובנדבה וטעון
נסכים כך כל הבא בנדר ונדבה טעון נסכים יצאו חטאת ואשם שאינם
באים בנדר ונדבה שלא יטענו נסכים: אלשריעה אלה מנה'
תאמר אדא כאן אלמתנפל בה מן אלבקר או אלגנם מסתרכי אלרכבה או
5 משתמרה פליכן תברעא לא נדרא בק' ושור ושה שרוע וק' וג' קולה שרוע
יקתצי מסתרכי אלרכבה פיגר מן אגל דלך בעין קואימה * פאמא קלוט
פאלדי קד תקלם עצבה פעלא מן אגל דלך בעין קואימה לקו' השחול והכסול

after ויין. By a remarkable coincidence LXX also omits that word. This is perhaps due to the tendency to harmonize that verse with verses 5 and 7.

l. 19. *Sifre Numbers*, section 107 (p. 29 a). See *Menaḥot* 90 b. Read throughout עולת חובה instead of חובה.

l. 21. [קדשים] Insert אלא after this word.

Fol. II a, l. 1. [בין] Read בן.

l. 5. [משתמרה] שִׁמֵּר in the eighth conjugation denotes *be hastened*, a signification which does not suit here. But as שִׁמֵּר means *contracted*, drawn together, משתמרה may signify *an animal whose limbs are contracted*.
17. [ושור וכו'] Lev. 22. 23.

l. 6. [פיגר] Read פִּיגֵר - פִּיגֵר.

l. 7. [תקלם] The more usual spelling is תִּקְלַם. [השחול] Bekorot 40 a.

איזה הוא שחול שנישמטה ירכו בסול שאחת מירכותיו גבוהה או רגלה
 כרגל אלפרס או אלחמאר לקו' שרוע שנישמטה ירכו וקלוט פרכות רגליו
 10 דומות לסוס פרכות רגליו דומות לחמור וקאל אלתלם פי שרה דלך קלוטות
 אם רב פפא לא תיט דענילן ולא סדיקן אילא כיון דענילן אף על גב דסדיקן
 וקו' נדבה תעש א' פיקתצי ביעהא ואצראף תמנהא לבדק הכית לקו'
 נדבה תעשה אתו אתו אתה עשה נדבה לבדק הבית ואין אתה עושה
 תמימים לבדק הבית מיכן אמרו המקדש תמימים לבדק הבית עובר
 15 בעשה: אלשריעה אלט מנה" תאמר אדא כאן
 אלקרבאן תברעא או נדרא אן יוכל פי יום קרב פיה ומן גדה כק' ואם
 נדר או נדבה ונ' למא קאל ביום הקריבו את זבחו יאכל וממ' ולם יקל עד
 בקר כקולה דלך פי אלתורה נאו אלאכל מנה פי זמאן אליום אלאול
 לדביחתה ולילה נדה ונדה לא פי זמאן אלליל אלדי יתלו נדה לקו' יכול
 20 יאכל לאחר שלישי ודין הוא זבחים נאמר ליום אחד זבחים נאמר לשני
 ימים יהא לילו אחריו תלם לזמ' עד יום עד יום הוא נאכל אינו נאכל לאור
 שלישי: אלשריעה אלי מנה" תאמר מקרב קרבאן
 שכרא ללה אן יציף אליה גראדקא פטירא מלתותה בדהן ורקאקא
 פטירא ממסוחא בדהן וגראדק רפכה מן סמר מלתותה בדהן וגראדק

l. 9. *Sifra Emor*, chapter 7, 6 (p. 98 d). See also *Bekorot* 40 a which contains important variants.

l. 10. *Ibid.*

l. 13. *Sifra Emor*, chapter 7, 7. 8 (p. 99 a), *Temurah* 7 b.

l. 16. *Lev.* 7. 16.

l. 18. *Ibid.*, 7. 15.

l. 19. *Sifra Šaw*, chapter 12, 13 (p. 35 d), *Zebahim* 56 b. Our text is corrupt.

l. 20. [לאחר] Read נאמר. לאור (twice).

l. 21. [ימים] Insert after this word: אחד ליום זבחים הנאכלין לשני ימים. לילה אחריו אף זבחים הנאכלין לשני ימים. This sentence obviously fell out through homoioteleuton.

l. 24. رَفَعَ with the signification *swelled, was raised* (of dough) is found in *Muḥīṭ al-Muḥīṭ*. Sa'adya, too, translates מרבכת by רפך. Ibn Janāḥ, however, is more accurate, and renders it by مَرْدُوكَةٌ which means *mixed* and is etymologically identical with Hebrew רבך.

11 b

בזו כמיר כק' אם על תודה יקר וג' על חלות לחם חמין יק וג' וקד אלכבו
 אלמכתמר עשרה עשרנים ובאקי אלאנאע אלתי הי חלות מצות
 ורקי מצות וג' וסלת מרבכת וג' עשרה עשרנים לקו' על חלות לחם
 חמין כנגד חמין הביא מצה מה חמין עשרה עשרונות אף מצות עשרה
 5 עשרונות⁵ פאמא אלנראדק ואלרקאק פמן כל ואחד מנהא עשרה עדדא
 פאלנמיע מ' דליל דלך והקריב ממנו אחד מכל קרבן וג' לאנה למא סמא
 אלמכבור מן דלך תרומה צח אנה גווא מן עשרה ואלבאקי יאבלונה
 אצחאבה לקו' תרומה ליי' איני יודע כמה הריני דן נאמר בן תרומה ונא
 תרומה בתרומת המעשר מה תרומת המעשר אחד מן עשרה אף זו אחד
 10 מעשרה וקאלו לא יהו כלם אילא קרבן אחד תלם לום והקריב על זבח
 התודה ואומ' והקריב ממנו אחד מכל קרבן תרומה ליי' נמצה לחמה
 של תודה ארבעים חלות נוטל מהן ארבע ונותן לכהן שנא לכהן הזורק
 את דם השלמים לו יהיה והשאר נאכל לכהנים וכמיה אלדהן חצי לג
 יכן ז דרהם לקו' חצי לג שמן לתודה ורביעית יין לנזיר ויא' יום שבן
 15 נדה לנדה הלבנה למשה מסיני¹⁵ תם שרחנא אלי שראיע
 אלמצדר דכרהא¹⁶ פאמא אלה אלשראיע אלתי הי נהיא¹⁷
 אלשריעה אלאלוי מנה¹⁸ תנהא דאבת קרבאנא שנרא
 ללה תברך אן יכלף שיא מן אללחם אלי גר צביחה גר יום תקריבה בל
 יאכלה פי יום תקריבה ולילה גדה כק' ובשר זבח תודת שלמיו וג' וטאהר
 20 לא יניח ממנו עד בקר יקתצי אכר אנזא אלליל לבן אלנקל תצמן באנה

Fol. 11 b, l. 1. Lev. 7. 12, 13.

l. 3. *Sifra Ṣaw*, chapter 11. 9 (p. 35 a). See also *Menahot* 77 b.

l. 6. Lev. 7. 14.

l. 8. *Sifra Ṣaw*, section 7, 1 (p. 35 a), *Menahot* 77 b.

l. 10. *Sifra, ibid.*, 7. 9 (p. 35 c). A part unnecessary for our purpose is omitted here. On the other hand the *Sifra* text should be emended and read שנאמר לכהן וג'.

l. 13. לבעלים Read לכהנים.

l. 14. *Sifra Ṣaw*, chapter 11, 6 (p. 35 a).

l. 19. Lev. 7. 15.

לא יגב אן יתעדי פי אכלה בעד סלך אלנצ' אלאל מן אלליל לקו' אוכל הוא
כל הלילה אם כן למה אמרו חכמי עד חצות כרי להרחיק את האדם מן
העבירה: אלשריעה אלב מנה' תנהא אן יתנפל
ללקרבאן חיואן הו אעמי או מכסורא או מבתורא או דא תאלול או

12 a

גרב או חזאז כק' עורת או שבור או חרוין או יבלת או גרב או ילפת לא
תק' א' ליי' קול' עורת יעם אעמי ואעור איצא לקו' בין הסומדה בשתי עיניו
ובין הסומה באחת מעיניו פאמא שבור פישמל כסר אלד ואלרגל ואלרנב
לקו' שבור מה תלמ לפי שנאמר שבר יד או שבר רגל אין לי אילא שנשברה
5 ידו או רגלו מנין לרבות שבר הונב תלמ לומ' או שבור פאמא חרוין ^{יב} פאלחא
פאלחאנב אלמחקוב ואלמכתור ואלמשקוק לקו' חרוין חריין של עין שנקב
או שנפגם או שנכדק: וקו' יבלת דא שפשנתין אלתי מתלהא פי חלק
גדי לקו' זה בעל היבלת ואמא גרב פיקחצי גרב רטב לקו' גרב זה החרס
פאמא ילפת פחזאז וישבה אן יכון גרב יאבס לקו' ילפת זו חזוית המצריית
10 ודק ותבלול הו בעין עיוב אלאנסאן פמתי ערצת פי אלכהאים אלתי תצלח

1. 21. [סלך] This is best taken as infinitive ^{سَلَخَ} *clapsing, passing*.

[אוכל וכו'] See above, note to fol. 3 b, l. 15. *Sifra Šaw*, chapter 12. 5 (p. 35 c). See Berakot 2 a.

Fol. 12 a, l. 1. Lev. 22. 22.

1. 2. ^{أعمى} = blind in general; ^{أعمى} = blind on one eye. *Sifra* [בין וכו'] *Emor*, section 7, 11 (p. 98 c), Bekorot 44 a. [הסומה] Read הסומה, or better still הסומא.

1. 4. *Sifra*, *ibid*.

1. 6. *Ibid.*, 7, 12. See Bekorot 38 a. Both readings חריין and ריס are recorded.

1. 7. [שפשנתין] This word is very clearly written; but it is impossible to say whether it is ^{سَفْسَجَة} or ^{سَفْسَجَة}, as neither word occurs in the Arabic dictionaries in the sense required here. There can be no doubt that it is synonymous with ^{وَلَة} *a wart*.

1. 8. [זה בעל וכו'] *Ibid.*, 7, 13. *Ibid.*, Bekorot 41 a.

1. 9. *Ibid*.

ללקרבאן פתפסדה לדלך לקו' הא יבלת דלא כתיבא באדם דק ותבלול דלא
כתיבא בבהמה מילף ילפי מהדרי דתניא באדם לא נאמר יבלת בבהמה לא
נאמר דק ותבלול מנין ליתן את האמור בזה לזה ואת האמור בזה לזה
תלם גרב גרב ילפת ילפת לגזירה שוה וסנוצח גמיע מא תקדם בה אלשרח

15 פי הרה אלשריעה וגירה פי מוצעה מן פצל שראיע אללו'*

אלשריעה אלז מנה ואלז איצא' תנהא אן יקרב חיונאנא

ממרוסא ומרצוצא ומנצולא ומקטועא ואן נפעל שי מן דלך פי בלדנא בק' ומעוך

ובתות ונ' וג' קולה מעוך חיונא לינת כציתה פרקת וברג אלביין מנהא'

ובתות פיקתצ' ממרוס אלכציתין או געל עליהא דוא פתרצצת או תפתרת

20 ונתוק פאלמקטוע אלקציב מן אצלה וכרות פאלמקטוע מנה בעין

קציבה לקו' ומעוך ובתות ונתוק וכרות כלן בבצים דברי ר' יהודה ר' יוסי ואומ

מעוך ובתות בבצים ונתוק וכרות בניד; וסנסתופי שרה דלך ואשכאהה

פי אלפצל אלעאשר; ופעל דלך פיתרם פי אלנאס איצא וגירהם לקו' אין לי אילא

בהמה וחיה ועוף מנין תלם לזמ בארצכם ואלתוספה פקאלת המסרם

12 b

את האדם ואת הבהמה ואת החיה ואת העופות בין גדולים ובין קטנים

בין זכרים ובין נקבות הרי זה ר' יהודה אומ' המסרם את הזכרים חייב את

הנקבות פטור' וקו' ובארצכם פיעם בלד אלשאם וגירה איצא נטיר דלך

שפטים ושטרים תתן לך בכל שעריך וג' לא תעשק שכיר עני ואביון מ' וג'

1. 11. Bekorot 43 a. The variants are slight.

1. 17. Lev. 22. 24.

1. 21. *Sifra Emor*, chapter 7, 9 (p. 99 a). See Tosefta Yebamot 10, 5, and Babli Bekorot 39 b. The opinion of R. Jose is adopted by Hefesh while that of R. Eliezer b. Jacob is omitted.

1. 23. *Sifra, ibid.*, 7. 11.

1. 24. [המסרם וכו'] Tosefta Makkot 5, 6.

Fol. 12 b, l. 2. [זה] Insert חייב after this word. The other variants are insignificant.

1. 4. [לא וכו'] Deut. 16. 18. *Ibid.*, 24. 14.

1. 5. *Sifra Emor*, chapter 7, 11 (p. 99 a).

5 ואשבחהמא לקו' אין לי אילא בארין מחוין לארין מנין תלמו לזיב לא העשו
 כל מקום שאתם מנין אף באדם תלמו לזיב ובכם דברי בן כינאי¹
 אלשריעה אלה מנה ואלו איצא² תנהא אן נאתי
 בקראבין מן גדר ואניה ועיין בלב כק' לא תביא אתנן זונה ומה כל ונ'³
 וקאל רב' איזה הוא אתנן האומר לחבירו הא לך זה בשכרך הרי זה אתנן
 10 ואפילו מאה כלם אסורים וקאלו אין לי אילא אתנן זונה אתנן כל העריות
 מנין תלמו לזיב לא תביא אתנן זונה מכל מקום: וצורה אלאהתנן איצא⁴
 חיונא יסלמה רגל לרגל לה נאריה אנרה מבייתהא ענדה פיקבלה מנה
 לקו' האומר לחבירו הא לך טלה זה ותלין שפחתך אצל עבדי רבי אובי אינו
 אתנן וחכמי אומי אתנן⁵ פאמא מחיר בלב פחיואן קד עורין בכלב
 15 ואי שריכין אקתסמא אננאם להמא ובלב קסמין מתסאויין פי עדר
 אלארס פתחרם אלחצה אלתי למ יחצל פי נמלתהא אלכלב לקו' איזה הוא

1. 6. [כינאי] Read חכינאי. Comp., however, Shabbat 110 b where such a statement is recorded in the name of רבי הנינא.

1. 8. [גדר] This noun with such a signification is not recorded in the Arabic dictionaries. Nor does the manuscript help us to decide whether the letters meant are גדר or גדר, or any other combination of the last two letters. Moreover ג may stand for ج or غ. But as جَدِيْرٌ signifies *worthy, fit*, there can be no doubt that جَرْد is here intended. I have some time ago suggested that Hebrew אתנן is not to be derived from תנן, which is a by-form to נתן, but from an independent root תנן whose meaning is *was like, worthy*. See *AJSL.*, XXIV (1908), pp. 366 ff. Accordingly this rendering of IJefeš would be peculiarly appropriate. Sa'adya translates this word by אנעאל. Ibn Janāh, too, has جعل. In the Taylor-Schechter Collection there is a fragment in which this word is translated by כרא^א = כרא. [לא תביא] Deut. 23. 19.

1. 9. [איזה וכו'] Temurah 29 a, *Sifre Deuteronomy*, section 261 (p. 121 a). A few slight variants. [לחבירו] Read לוונה.

1. 10. *Sifre, ibid.*

1. 13. Temurah 29 a, *Sifre, ibid.* Our text agrees with the latter in ascribing this opinion to רבי, not to מאיר.

1. 16. [אלארס] This stands for أَرْس (plural of أَرْس). As Hamzah is usually omitted in this manuscript و is not inserted. [איזה וכו'] Temurah 30 a. See *Sifre, ibid.*

מחיר כלב האומר לחברו הא לך טלה זה תחת כלב זה וכן שותפין
 שחלקו אחד נוטל עשרה ואחד נוטל חשעה וכלב שכנגד כלב אסורין
 ושעם כלב מותרין פאמא אי אנסן פעל עכס הדה אלשריעה פאתי
 20 ללה תברך אתנן כלב ומחיר זונה פדלך מטלק לקו' תנו רבנן אתנן
 כלב ומחיר זונה שניהם מותרין שנ' שנים ולא ארבעה ואולאד
 אלאאתנן ואולאד מחיר כלב מטלקין ללקרבאן לקו' ולדותיהן מותרין
 שנ' גם שניהם ולא ולדותיהן וקאלו פי שרה בית יי' אלהיך לכל נדר להביא
 פרת חטאת שאינה באה לבית לכל נדר להביא את העוף שהיה
 25 בדין ומה המקודשין שהמום פוסל בהן אין אתנן ומחיר כלב חלין עליהן

13 a

עוף שאין המום פוסל בו אינו דין שלא יהא אתנן ומחיר חלין עליהן תלמ'
 לומ' לכל נדר להביא את העוף' אלשריעה אלז מנה'
 תנחא אן יבדל בהימה אעדת אן תקרב בבהימה אכרי או תניר פאן נרי דלך
 פיציר אלגמיע ללה כק' לא יחליפנו ולא ימו' את' ונ' אן אבדל ולד אלנדר
 5 לא יציר בדלה לדאך קדש ולא אן אבדלת תרומה יציר בדלה קדש לקו'
 הקדש עושה תמורה ולא הולד עשה ולא תמורה עושין תמורה: טוב
 ברע ואן כאן דא עיב במא לא עיב פיה לקו' תמימין בעלי מומין ובעלי

1. 19. Unusual spelling of ^{אֱנָסָן} [אנסן].

1. 20. Temurah 30 a, Yebamot 59 b, Soṭah 26 b. The reading תנו רבנן is found nowhere. It is indeed a Mishnah in the first-named place.

1. 22. Temurah 30 a.

1. 23. *Sifre Deuteronomy*, section 261 (p. 121 a). See Temurah 30 b. Some sentences are omitted here. [להביא] This is obviously a mistake for להוציא. The printed texts are unanimous in reading פרט. There are a few more variants.

Fol. 13 a, l. 4. Lev. 27. 10.

1. 5. [תמורה] Read תרומה.

1. 6. *Sifra Beḥuḳḳotai*, chapter 9, 5 (p. 113 a). See also Temurah 12 a. The variants are slight.

1. 7. *Sifra*, *Ibid.*, 9, 6.

מומין בתמימין ואם המר ימר מבררא ליצם אלי דלך אלמראה ואלואר^ת
לקו' ואם המר ימר לרבות את האשה ואם המר ימר לרבות את הוריש
10 פאמא בהמה בבהמה פלא יבדל ראסה ואחדא בק' ראס או ק' ראס בראס
ואחד או אכתר ואקל לקו' אחת במאה ומאה באחת אד אלעבראני יסמי
אלחיואן אלבהימי אלבתיר בהמה ואלואחד מנהא בהמה לקו' ר' שמעון אומי
בהמה בבהמה לא בהמה בבהמות אמרו לו בהמה אחת קרואה בהמה
ובהמות רבות קרואות בהמה פאמא יהיה קדש פעלי אלונה כלהא
15 קצרא וסהוא לקו' יהיה קדש לעשות שונג כמזיד: אלשריעה אלח מנה
תנהא אן נאכל פי גיר אלמוצע אלכאין עשור אלבר ואלעציר ואלדהן
ובבור אלננס ואלבקר ואלנדור ואלחברע ואלרפאיע בק' לא תוכל לאכל
בשעריך וג' אלמועשרות סנדכרהא פי אלפצל אלז ואלבכורות איצא
פסנדכרהא פי אלפצל אליד ואלנדור אלתי יצח פעלהא פי הדא אלזמאן ומא
20 לא יצח פעלהא פקד דכרנא עיונהא פי אלפצל אלזול ודלך סוא מא סנדכ^ה [א]
פימא יסתאנף: פאמא ותרומת ידיך פקאל רבות' אילו הבכורים וקד
דלך פי אלפצל אלזול תם שרחנא אלקסם אלזול אלחאוי עלי
אליה אלשריעה: אלקסם אלב יחוי i שראיע פי אלקראבין מן אלבר
וגיראה לא ילזם פעלהא פי הדא אלזמאן תנקסם קסמין אלזול יתצמן

13 b

ה' שראיע אמרא אלב יתצמן שריעתין נהיא" שרה אלקסם
אלזול" אלשריעה אלזולי מנה" תאמר מהנפל בקרבאן

l. 8. Read [מבררא = מבררא] = *repeated*. There can hardly be any doubt that this particular law is derived from the fact that the infinitive absolute is employed, that is to say, from the repetition of the verb.

l. 9. *Sifra, ibid.* (p. 113 b). See Temurah 2 a, f.

l. 10. [ראסה] Read ראסא.

l. 11. *Sifra, ibid.*

l. 12. *Ibid.*

l. 15. *Ibid.*, 9, 16. See Temurah 17 a.

l. 17. Dent. 12. 17.

l. 21. [אילו וכו'] *Sifre Deuteronomy*, section 72 (p. 89 b), Pesahim 36 b and many other places. Insert שרחנא after this word.

הדיה מן סמך אן יצב עליהא דהנא וינעל עליהא לבאנא ויאחי בהא אלי
אלאמאם ויקבין מנהא מלו קבצתה מן סמדהא ודהנהא מע נמיע לבאנהא
5 ויקתר דלך עלי אלמדבח קרבאן מקבול מרצי ללה בכ' ונפש כי תקריב קרבן
מנהא וג' והביאה אל בני אהרן הכהנים וג' אקל אלכמיאת פי הדא אלקרבאן
עשרון יכון וזנה תשכ דרהמא ואלדהן אקל דלך וון ק' דרהם לקו' ר' נתן אומ'
בנין אב לכל המתנדב מנהא שלא יפחות מעשרון ולג שמן: ואלמנחות אלדי
יב אן יקבין מנהא עשרה אנואע והי מנחת הסלת והמחבת והמרהשת
10 והחלות והרקיקים ומנחת גוים ומנחת נשים ומנחת העומר ומנחת חוטא
ומנחת קנאות ר' שמעון אומ' מנחת חוטא של כהנים נקמצת והקומין
קרב בעצמן והשירים קרבין לעצמן ואלקמיצה פחדהא בסט ג' אצאבע
אלכף אלתי דון אלאבהאם ואלסבאהא אלי מא ילי אלכף לא לילצקהא באלכף
פיקבין בהא מן תחת מלו קבצה לא זאיד עליה לקו' אמ' אביי לרבה
15 כאיוצד קומצין בדקמצי אינאשי אוטיביה זו זרת זו קמיצה זו
אמה זו אצבע זו גודל אילא להשוות היכי עאביד אמ' רב זוטרא בר
טוביה אמ' רב חופה שלש אצבעות על פס ידו וקומין' חניא נמי הכי
מלוא קמצו יכול מלוא קמצו מבורין תלם לומ' בקמצו או בקמצו יכול
קומין בראשי אצבעותיו תלם לומ' מלא קמצו הא כאיוצד חופה את
20 פס ידו במחבת ובמרחשת מוחק באצבעותיו מלמעלה למטה וקאלו

Fol. 13 b, l. 5. Lev. 2. 12.

l. 7. *Sifre Numbers*, section 107 (p. 29 b).

l. 8. [בנין] The printed edition has בנה זה.

l. 9. See *Menahot* 72 b.

l. 12. [בעצמן] Read בעצמו.

l. 14. *Menahot* 11 a.

l. 15. [בדקמצי] The printed edition has אמר ליה before this word.

l. 16. [להשוות] After this word there is the following Hebrew gloss in the Talmud: כלומר קומין מלא חיר כרי שלא יהא חסר ואח"כ מוחק באצבע קטנה מלמעלה למטה. There can be no doubt that this is a very late addition.

l. 17. [אצבעות] The printed edition inserts עד שמוגיע after this word.

l. 19. [חופה וכו'] The talmudic text is more elaborate and explicit. It is as follows: חופה שלש אצבעותיו על פס ידו וקומין במחבת ובמרחשת מוחק בנודלו מלמעלה ובאצבעו קטנה מלמעלה למטה.

איצא הקומין הותיר והחסיר פכול איזה הוא יתיר שקומצו מבורין וחסר
שקמצו בראשי אצבעותיו אלשריעה אלב מנה
תאמר מתנפל בקרבאן הדיה מן כבו תנור אן יאתי בה גראדק פטירא
מן סמך מלתותה בדהן או רקאק פטירא ממסוזה בדהן בק' ובי תקריב

14 a

[א] קרבן מנחה מאפה ת' וג' קו' חלות מצות בלולות בש' וג' יקתצי אבותיא
יעני אן אכתאר גראדק או רקאק לקו' אמ' ר' יהודה מנין לאומר הרי עלי
מנחת מאפה שלא יביא מחצה חלות ומחצה ריקים תלמ' לומ' קרבן
קרבן אחד הוא מביא ואין מביא חלות וריקים אמ' ר' שמעון ובי נאמר
קרבן קרבן שני פעמים והלא לא נאמר אלא קרבן אחד ונאמר בן חלות 5
וריקים רצה להביא חלות יביא ריקים יביא מצה חלות ומחצה ריקין
יביא ובשהוא קומין בולל וקומין משניהם ואם קמין ולא עלה בידו
אילא אחד משניהם דין וקאלו איצא אילו מנחות נקמצות ושיריהן
לבהנים מנחת הסלת והמחבת והמרחשת וג' וקאלו אמ' רב פפא כל היכא
דחנן עשר תנן ומאי קמיש' לן לא מדר' שמעון דאמ' מחצה חלות ומחצה 10
ריקין יביא קא משמע לן דלא* וחד אלהן אלרי ימסח בה אלרקאק עלי

1. 21. *Ibid.*, 6 a. Instead of the verbs הותיר והחסיר the Mishnic text has the adjectives היתר והחסר. It is possible that adjectives are intended also in our text, and we simply have to change הותיר into היתר.

1. 24. Lev. 2. 4.

Fol. 14 a, l. 2. *Sifra Wayyikra*, section 10, 1. 2 (p. 10 c). See also Menahot 63 a. The variants are insignificant.

1. 5. [בן] Read בו.

1. 6. [מצה] Read מחצה.

1. 8. [דין] Read דיו וכו' Menahot 72 b.

1. 9. *Ibid.*

1. 10. [לא] Although there is no abbreviation mark in this word, there can be no doubt that it stands for לאפוקי, otherwise the preposition מ of the following word would be impossible. If, however, we wish to regard לא as a complete word, we ought to read דלא כר'. This expression, though quite suitable, is weaker than the other.

כל ואחרה מנהא כנצף דאירה לקו' כאיוצד מושהין מושה פני כל הרקיק
 ו' שמעון אומ' מושה פני כל הרקיקים כמין כי ושאר השמן נאכל לכהנים
 מנהא שהיתה באה מחצה חלות ומחצה רקיקין מביא לג' שמן וחוצהו
 15 נותן מחצה לחלות ומחצה לרקיקין ו' שמעון אומ' מושה את הרקיקין
 כמין כי ושאר השמן נותן לחלות וכן היה ו' שמעון אומ' רקיקי מנחת ישראל
 פְּתִיתָתָן בְּכֻיֹּתֵימִי כְּדִי שִׁיחָא שׁוֹלֵט בְּהֵן לְקַמְצֵן חֲצִי לֵג מִיִּם לְשׁוּטָה וְחֲצִי
 לֵג שְׁמֵן לְתוֹדָה נֹתֵן מִחֲצָה לְחָלוֹת וּמִחֲצָה לְרִקִּיקִין ו' שמעון אומ' מושה
 את הרקיקין כמין כי ושאר השמן נאכל לכהנים וכן היה ו' שמעון אומ'
 20 האומ' הרי עלי מנחת מאפה מביא מחצה חלות ומחצה רקיקין וכולל
 ונוטל מן האמצע ואם נתן ממין על חבירו יצא מאי כמין כי אם רב כהנא
 כמין כי יוני אלשריעה אלז' מנה:
 תאמר מתנפל בקרבאנא הריה עלי טאבק אן תכון סמא פטירא
 מלתותא ברהן תם יתרדהא ויצב עליהא דהנא כק' ואם מנחה על המחבת

14 b

קר' וג' פתות אותה וג' וממא ידל עלי אן מחבת טאבק קול רבותינו מחבת
 צפה ומעשיה קשים פתות אתה פת' בכמקדאר אלזיתון לקו' מנחת
 ישראל קופל אחד לשנים ושנים לארבעה ומבדיל מנחת כהנים קופל
 אחד לשנים ושנים לארבעה ואינו מבדיל מנחת כהן משיח לא היה ~

l. 12. Tosefta Menahot 8, 8-12. The few variants are obviously genuine.
 See also Babli 74 b.

l. 17. [לשוטה] More accurate than the usual spelling שוטה.

l. 21. [מאי וכו'] Menahot 75 a. Some such word as וקאל or איצא must
 have fallen out before this word, as the following is no continuation, but an
 explanation of the preceding.

l. 23. [בקרבאנא] A double mistake in orthography: it ought to be
 genitive and without the nunnation. Read בקרבאן.

l. 24. Lev. 2, 5, 6.

Fol. 14 b, l. 1. Menahot 63 a, *Sifra Wavyyikra*, chapter 12, 7 (p. 11 a).

l. 2. Menahot 75 b, *Sifra, ibid.*, 12, 4. The Mishnah uses קפל, whereas
Sifra has כפל. Our text uses both indiscriminately.

5 מכפלה ר' שמעון אומ' מנחת כהנים ומנחת כהן משיח אין בהן פתחה
 מפני שאין בהן קמיצה וכל שאין בה פתחה אין בה קמיצה וכלם פתיתון
 בכזיתים וקאלו תניא היה עומד ומקרב מנחות בירושלם אומ' בר' שהחנינו
 וקיימנו ונ' נטלן לאכלן אומ' המוציא לחם מן הארץ ותנן וכלן פתיתון
 בכזיתים וגמיע אנואע אלמנחות תתרד מא כוי שתי הלחם ולחם הפנים
 10 לקו' מנחה לרבות כל המנחות לפתים יכול אף שתי הלחם ולחם הפנים
 תלמ' לומ' אתה מה לראית לרבות את כל המנחות ולהוציא שתי הלחם
 ולחם הפנים אחר שריבה הכתוב מיעט מה אילו מיוחדין שיש מהם לאשי^ם
 יצאו שתי הלחם ולחם הפנים שאין מהם לאשים"

אלשריעה אלד מנה" תאמר מתנפל בקרבאן מצטנע

15 פי טנניר אן יצנעהא מן סמר ודחן כק' ואם מנחת מרחשת קרבנך ונ'
 אלדליל עלי אן מרחשת טנניר קולה מה בין מנחת^{חב} למרחשת מרחשת
 יש לה כיסוי ומחבת אין לה כיסוי דברי ר' יוסי הגלילי ר' חנניה בן גמליאל
 אומ' מרחשת עמוקה ומעשיה רוחשים מחבת צפה ומעשיה קשים:

אלשריעה אלה מנה" תאמר תליח אלקראבין כק' וכל קרבן

20 מנחתך במלח תמ' ונ' לים קו' דלך יעם תמליח סאיר אלמנחות בל אלמקרב
 מנחה עלי אלמזבח לא ניר לקו' יכול תחא מנחה כלה טעונה מלח תלמ' לומ'
 קרבן הקומין טעון מלח ואין כל המנחה טעונה מלח" פאמא ולא תשבית

I. 6. Read [וכל שאין בה פתחה] וכל שאין וכו'. The nouns have changed positions in our text.

I. 7. Berakot 37 b, Menahot 75 b.

I. 10. *Sifra, ibid.*, 12, 5. See Menahot 75 a. The variants are phraseological.

I. 15. Lev. 2. 7.

I. 16. Menahot 63 a, *Sifra, ibid.*, 12, 7.

I. 19. Lev. 2. 13.

I. 21. *Sifra, ibid.*, 14, 2 (p. 12 a). See also Menahot 20 a. Insignificant phraseological variants.

I. 23. [אלמתכאתך] Although *اَلْمَتَكَثِفُ اَلْاَجْزَاءُ* is a defensible construction in Arabic (see Wright, *Arabic Grammar*, vol. II, p. 222 A, and Nöldeke, *ZDMG.*, 32 [1878], p. 402), it is more elegant to say . . . *مَتَكَثِفٌ*. Its literal meaning is *thick as to its parts*.

23 מלח וג' פיקחצי אלמתכאתף אלאגוא מן אלמלח לתבאתה עלי אלממלוח
פלא ינחל בסרעה לקו' ולא תשבית לא תשבית מלהביא מלח שאינה

15 a

שובתת ואיוו זו סודמית¹ ומנין אם לא מוצא סודמית יביא אסתרקנית
חלמ לומ תקריב מלח רבה² על קרבנך ה' מ' פיקחצי תמליה סאיר
אלמקרבאת לקו' תניא בשלשה מקומות המלח ניתנה בלשכת המלח
ועל גבי הכבש ובראשו של מזבח בלשכת המלח ששם מולחין עורות
5 קדשים ועל גבי הכבש ששם מולחין את האברים ובראשו של מזבח
ששם מולחין הקומין והלבונה ומנחת כהנים ומנחת כהן משיח ומנחת
נסכים ועלת העוף וכיפיה מלח אלממלוח פמלח גהתי אלעצו לקו' תנו
רבנן כאיצוד הוא עושה מביא את האבר ונותן עליו מלח וחוזר והופכו
ונותן עליו מלח ומעלהו אמ' אביי וכן לצלי: תם שרחנא אלה ישראיע

1. 24. $\text{חָלַל} = \text{חָלַל}$ (seventh conjugation of חָלַל) is melted, dissolved.
[ולא וכו'] *Sifra, ibid.*, 14, 4. See also *Menaḥot* 21 a. Important variants.
[מלהביא] The reading of *Sifra* להביא is inferior, on account of its ambiguity.
The Talmud has הבא which is imperative. The omission of the second
לא תשבית in the printed editions is scarcely defensible. It seems likely
that our manuscript has preserved the original reading. Perhaps the reading
of *Sifra* arose through taking מלהביא as מ' להביא = מלח להביא, and the
second לא תשבית was omitted through homoioteleuton. According to
Ḥeḥeṣ מלח שאינה שובתת ought to be translated salt which melts not (lit. which
ceases not). This is preferable to the explanation of Rashi (*Babli, ad loc.*)
who takes it in its literal sense: which is found in all seasons. For according
to this interpretation the second clause is slightly illogical.

Fol. 15 a, l. 1. [סודמית] Read סודמית. *Sifre* has סלקונדרים,
while *Babli* agrees with our manuscript.

1. 2. *Menaḥot* 21 b. See also *Tosefta* 6, 2. 3.

1. 7. *Menaḥot* 21 a. There is no תנו רבנן there. See *Tosefta* 6, 4.

1. 9. [לצלי] The printed edition has לקרירה. Our manuscript, however,
offers a genuine variant. See *Maimonides's Code, Issure Mizbeah*, 5, 11, and
Kesef Mishneh, ad loc. But *Tosafot, Hullin* 14 a under heading ונסבין
remarks: נרסינן אמר רבה וכן לקרירה ולא נרסינן וכן לצלי: Comp. also
112 a, under heading ה"מ. In *Pesahim* 74 a, under heading ה"א, the reading

10 אלמערדר דברהא^ה פאמא אלשריעתין אלתין המא נהיא^ה
 אלשריעה אלאולי מנה^ה תנהא אן יקרב כמיר או עסל כק' כי כל
 שאר וכל רבש ונ' ואלקדמא תסמי אלתמר רבש לקו' איזה הוא רבש זה
 רבש תמרים וממא ידל עלי אן דלך תמר לא עסלה קו' קרבן ראשית
 תקריבו א' ל ודלך משירא אלי אלבכורים ולמא אסתחאל אן יקרב בכורים
 עסל עלמנא אן דלך תמר לא עסלה לקו' אין מביאין בכורים משקין אילא 15
 היוצא מן הויתים ומן הענבים ואין מקריבין על גבי המזבח אלא היוצא מן
 הויתים ומן הענבים ואן אכתלט שי מן הדין בשי מן אלמקרבאת לא יגזו
 תקריבה לקו' אין לי אילא המרבה הממועט מנין תלמ' לז' כל שאר וואן
 לי אילא הוא עצמו ערובין מנין תלמ' לז' כי כל שאר רבש לא תקטירו
 20 אין לי אילא המרבה הממועט מנין תל' לז' רבש אין לי אילא הוא עצמו
 ערובין מנין תלמ' לז' וכל רבש: אלשריעה אלב מנה^ה
 תנהא אלאנגבי מן אלהרון מודאכלה אלהרון פימא וחלו לה דון גירחם כק'
 וזר לא יקרב אליכם וקאלו רבות' וזר לא יקרב אליכם למה נאמר לפי

15 b

שהוא אול' והזר הקרב יומת עונש שמענו אזהרה לא שמענו תלמ' לז'
 וזר לא יקרב אליכם: תם שרננא אלקסם אלתאני אלאחוי עלי i אלשראיע
 לקרירה is mentioned, and is refuted, as most copies have לעלי
 passage אבוי, רבה, is the authority for this decision.

l. 11. Lev 2 11.

l. 12. *Sifre Deuteronomy*, section 297 (p. 127 b). The words הוא איזה are missing in the printed edition.

l. 13. Lev. 2. 12.

l. 15. Terumot 11, 3. That part of the Mishnah which is irrelevant to our subject is omitted here.

l. 18. *Sifra Wayyikra*, section 12, 4 (p. 11 d). The unnecessary part is not quoted. See also Menahot 58 a.

l. 19. [ערובין] Printed edition has ערובין.

l. 20. [רבש] Sifra has וכל רבש. Our reading appears to be superior, as וכל is required for the following derivation.

l. 22. [והלו] = הלו, are considered.

l. 23. [וור וכו'] *Sifre Numbers*, section 116 (p. 36 b). Some phrasological variants.

אלמוצדר דבראה" אלקסם אלז יחוי יא שריעה פי אלמואל וקס אלנפס
 וגיר דלך תנקסם קסמין אלואל יתצמן ה שראיע פעלהא סאקט ענא פי הדא
 5 אלמואן ה מנהא אמרא וג נהיא" אלחאני יתצמן ג שראיע אמרא
 ילום פעלהא פי כל זמאן ומכאן" שרה אלה אלשראיע אלתי הי
 אמרא" אלשריעה אלואלי מנה תאמר אי רגל נדר נפסה ללה אן תבן קימחה
 מנר ימצי מן עמרה כ סנה אלי סתין סנה ג מתקאלא מן אלורק במתאקיל
 אלקדם כק איש כי יפליא נדר וג והיה ערבך הו וג פאן כאן אלנאדר מראה
 10 פקימחהא מנר ימצי מן עמרהא כ סנה ואלי ס סנה תלתין מתקאלא כק ואם
 נקבה היא וג פאן כאן אלרגל אלנאדר בן ס סנה ומא פוקהא פאלקימה פי דלך
 טו מתקאלא ואלמראה אבנת הדא אלסן י מתאקיל כק ואם מבן ששים
 שנה ומעלה וג וקימה מנדור מנר ימצי מן עמרה שהרא ואלי ה סנין ה
 מתאקיל מן אלורק פאן כאנת אנתי פז מתאקיל כק ואם מבן חדש ועד בן
 15 חמר שנה וג וקימה מנדור מנר ימצי מן עמרה ה סנין ואלי כ סנה עשרין
 מתקאלא ורקא פאן כאנת אנתי פעשר מתאקיל כק ואם מבן חמש שנים
 ועד בן עשרים טז וג פאן כאן אלנאדר מהינא יעני מן אלקימה פילומה אלמאם
 מן דלך חסב מא תנאל ידה כק ואם מך הוא מערבך וג וקאלת אלמשה
 הבל מעריכין וגערכין וגודרין וגודרין כהנים ולוים וישראל גרים ונשים

Fol. 15 b, l. 8. ג Read [אלורק] *leaf, paper, coin*. The author found it necessary to specify מתקאל with this word in order to exclude the idea of *weight*.

l. 9. Lev. 27. 2, 3.

l. 10. *Ibid.*, 27. 4.

l. 12. *Ibid.*, 27. 7.

l. 14. *Ibid.*, 27. 6.

l. 16. *Ibid.*, 27. 5.

l. 17. [יעני] This word may be *يَعْنِي* it signifies, used in the sense of *namely* or *that is to say*. It is also possible that Ḥefeṣ meant it to be *يَعْنِي* *is lowly, is in distress* = Hebrew יעני. In this case it would have to be regarded as being in apposition to מהינא. In my translation I adopted the former alternative, as the unnecessary repetition is somewhat cumbersome; but for the sake of lucidity I thought it advisable to add מך without intending it to be a double rendering.

l. 18. *Ibid.*, 27. 8.

l. 19. [הבל וכו'] 'Arakin 1, 1. גרים The printed editions omit this word.

20 ועבדים וטומטום ואגדרננוס נודרין ונדרין ומעריבין אבל לא נערכין
 שאינן נערך אילא זכר ודאי ונקבה ודאית חדש שוטה וקטן נודרין
 ונערכין אבל לא נודרין ולא מעריבין מפני שאין בהן דעת פחות מכן
 חדש נדר אבל לא נערך¹ סבב קולחם שאינו נערך אילא זכר ודאי
 ונקבה ודאית לקו' אללה תב והיה ערכך הזכר וג' ואם נקבה היא וג' וסבב

16 a

קו' איצא פחות מכן חדש נידר אבל לא נערך לקו' אללה תברך פי אלערכים
 ואם מכן חדש וג' ובין אלגדר ואלקומה פרוק מנהא אן קאל קאיל אן תמן ידי
 עליי פיקומה אלחאכס זיאדה תמן עבד לה ידי עלי עבד מתלה לא ידי לה י
 פאמא אן קאל קימה ידי עליי פלא יגב עליה ישיא פאן קאל בעין
 5 אלדאיסה מן אעצאה אעני קלבה או ראסה או כבדה פילומה קימה נמיע
 דאתה אר בכל ואחר מן הדה קואם דאתה לקו' רמי ידי עלי שמין אתה כמה
 הוא שוה ביד וכמה הוא שוה בלא ידי ערך ידי וערך רגלי עליי לא אמור כלום
 ערך ראשי וערך כבדי עלי נותן ערך כלו זה הכלל דבר שהנשמה תלויה
 בו נותן ערך כלו פאן נדר אבן שהר או אבן כמס סנין או נירהמא פלם יודי
 10 דלך פלא ילומה אלא חסב סן אלמנדרור וקת אן נדר לקו' העריכו פחות מכן
 חדש ונעשה יתר על בן חמש פחות מכן עשרים ונעשה יתר על בן עשרים

1. 20. [וטומטום] Delete the *tau conjunctivum*, as a new sentence begins here.

1. 21. [נודרין] Read נידרין.

1. 24. Lev. 27. 3, 4.

Fol. 16 a, l. 2. Lev. 27. 6.

1. 5. [אלדאיסה] Read *الأعضاء الرئسية* = *chief, vital*; *الرئسية* denotes the capital, or vital members of a living being.

1. 6. 'Arakin 19 b. Some phraseological variants.

1. 7. [ערך וכו'] *Ibid.*, 20 a. Perhaps *ואיצא* fell out before this word. It is also possible that Ḥefes quotes the Mishnah (5, 2), omitting the unnecessary part.

1. 10. [וקת אן] This is a colloquial expression. In good prose אן would be omitted. [העריכו וכו'] *Ibid.*, 18 a.

1. 11. [חדש] Read חמש.

נותן בזמן הערך פאן קאל עלי נצ' קימתי פיודי דלך לקו' חצי ערבי עלי נותן חצי
 ערבו פאן קאל קימה נצפי עלי יגב עליה קימה כלה ואן קאל נצ' חמני עלי יגב
 עליה נצ' תמנה פאן קאל תמן נצפי עליי פיגב עליה אדי תמנה לקו' ערך חצי
 15 עלי נותן ערך כלו חצי דמי עלי נותן חצי דמיו דמי חציי עלי נותן דמי כלו זה
 הכלל דבר שהנשמה תלויה בו נותן דמי כלו' ואקל מא יגב אן יקום אלפקיר לא
 אקל מן סלע פאן אסתנני לא ילומה שי אכר' פאן אלתום אקל מן סלע תם
 אוסר פילומה קימה מוסר לקו' אין בערבין פחות מסלע ולא יתר מחמישים
 סלע כאיוצד נתן סלע והעשיר אין נותן כלום פחות מסלע והעשיר נותן
 20 חמישים סלע היו בידיו ה' סלעים ר' מאיר אומ' אין נותן אילא אחת וחכמ'
 אומ' נותן את כלם: אלשריעה אלב' מנה' תאמר אי רגל
 אקדם ביתה ללה פליקומה אלאמאם בחסב נודתה ורדתה פאן אכתאר
 מקרסה פכאבה פליין מא קומה אלאמאם וזיאדה אלכמס כק' ואיש כי
 יקריש את ביתו קד' וג' ואם המקריש ינאל וג' קאל רבותינו פי שרר דלך יכול

l. 12. 'נצ' Perhaps colloquial *nuṣ*. See above, fol. 3 b, l. 15.

l. 17. 'חצי וכו' [Arakin 20 a.

l. 14. *Ibid*.

l. 17. [אלתום] *he owned, possessed*. The ordinary signification of this word is *he was responsible, obliged*, and in modern Arabic it has acquired the idea of *ownership*, since one is responsible for a thing one owns. This latter meaning is quite frequent in the Egyptian dialect. See S. Spiro's *Arabic-English Vocabulary* where the meaning *to have a monopoly* is given. An Egyptian Sheikh who presented me with a copy of an Oriental edition of the Diwan of Muslim b. al-Walid wrote down *هدية من ملتزمة* *a gift from the owner*. See also Dozy who quotes such an expression as *التَّزَمْتُ للتاجر* *he took a farm* which approaches the meaning *he possessed*. The context of our passage clearly proves that this meaning is very old, and is no modern innovation, since *he was responsible* does not suit here.

l. 18. [אוסר] Better *איסר* = *أَسَرَ*, since this verb is a *primae Ya*. *Ibid.*, 7 b.

l. 22. [פליקומה] Either a short clause fell out before this word, or we have to read *אן* instead of *פל*. It is also possible that it is merely a slovenly construction, the author having *והעריכו* in mind and forgetting that he started with *תאמר*. Sa'adya has the same construction.

l. 23. Lev. 27. 14, 15.

l. 24. *Sifra Beḥukḥotai*, section 4, 8 (p. 113 d).

16 b

יכול בבית דירה הכתוב מדבר כשהוא אומ' ואם המקדיש יגאל את
 ביתו הרי בית דירה אמור וקאל ואם המקדיש יגאל את ביתו לרבות
 את האשה ואם גאל יגאל לרבות את היורש' אלשריעה אל' מנה
 תאמר אי אנסאן נדר ללה בהימה ננסה לא יקרב מנהא קרבאנא
 5 ללה אן תוקף בין ידי אלמאם פיקומהא בחכב גודתה ורדאיתהא פאן
 אכתאר מקדסהא פכאכהא פליזר אלכמס עלי אלקימה כק' ואם כל בהמה
 טמאה וג' והעריך חכהן א' וג' ואם גאל יגאלנה וג' לים קו' בהמה טמאה
 אלנגס מן אלבהאים בל דואת עיוב לא יגו אן יקרב מתלחה לקו' יכול בבהמה
 טמאה הכתוב מדבר כשהוא אומ' ואם בבהמה טמאה ופדה בע' וג' הרי
 10 בהמה טמאה האמורה הא אינו מדבר אילא בפסולי המוקדשים שיפדו
 יכול יפדו על מום עובר תלמ' לומ' אשר לא יקריבו ממנה קרבן ליי' יצא
 בעל מום עובר שהוא כשר למחר: טמאה לרבות את המתה: וקאל
 רבות' פי אלאקדאם ואלקיים ואלצואפי תניא אין מקדישין ואין מעדיבין
 ואין מחרימין בזמן הזה הקדיש העריך ההרים בהמה תעקר פרות
 15 כסות וכלים ירקבו מעות וכלי מתכות יוליך לים המלח איזה הוא

Fol. 16 b, l. 1. [יכול] To be omitted as dittography.

l. 2. *Ibid.*, chapter 10. 2 and 11. In Sifra the inclusion of *the wife and the heir* is given twice: on verses 15 and 19. Our text, however, derives *the wife* from verse 15 and *the heir* from verse 19. But as these two verses treat of different kinds of consecrations this combination is hardly justifiable. On the other hand the Sifra text excites suspicion, as it is not in accordance with rabbinic logic to derive two things from one word.

l. 6. Lev. 27. 11-13.

l. 8. [יגו] Read יגו. [יכול] Sifra, *ibid.*, section 4, l. 2. See also Temurah 32 b. Some phraseological variants.

l. 10. [האמורה] The first ה is to be deleted as dittography.

l. 13. [ואלצואפי] This is how Sa'adya renders חרם in Lev. 27. 28 and Num. 18. 14. See Dozy who quotes passages in which the meaning *confiscation* is assigned to this word. The singular thereof is صَافِيَةٌ. See also Kur'an, XXXII, 37. The signification of the latter is, however, dubious. [תניא זכר] 'Abodah zarah 13 a, Bekorot 53 a.

עיקור נועל דלת בפניה ומתה מאליה' אלשריעה אלך מנה'
 תאמר אי נאסך מאת מעה מית בנתה או נפלה פקד קטע אול
 נסכה פחלק ראסה פי אליום אלז ודלך יום טהרה ופי אליום אלח לנאסתה
 יאתי שפנינן או פרכי חמאם אלי אלאמאם אלי באב כבא אלמחצר יעמל
 20 אחרהמא דכוה ואלאכר צעידה ויסתנפר ענה מומא אכטא מן אגל מית
 ויקדם ראסה פי דלך אליום תם יעוד אלי נסכה ויאתי ללקרבאן אלאתם המל
 אבן סנתה ומא מצי מן נסכה קבל ננאסתה פסקט מן אלומאן אלדי נדר
 אן יכן פיה נאסכא למא אנקטע נסכה כק' וכי ימות מת עליו ב' וג' וביום
 השמיני וג' ועשה הכהן וג' והזיר ליי' את ימ' וג' ק' וכי ימות פיקצתי חציר

17 a

נזיר פי מוצע פיה מריץ פמאת בנתה והו חאצר פיה או כונה ענר
 צחיה פמאת פנאה סאהיא כאן אלנזיר או מאנע מנעה ען אלכרוג מנה
 לק' וכי ימות שגפל הבית עליו ועל המת בפתע פתאם לרבות
 שמת עמו בפונדק' ואיצא בפתע להביא את האנוס פתאם להביא את
 5 השוגג דברי ר' יאשיה ר' יונתן אומ' בפתע זה שוגג פתאם זה אנוס
 וגלה ראשו ביום טהרתו פי אלסאבע לנאסתה מן מית תם יגב אן ינצח
 עליה פי אלתאלת ופי אלז איצא מן אפר פרה כק' הוא יתחטא בו ביו' היט' וג'
 וקאל רבות' תנלח טמאה כאיוצר היה מזה בשלישי ובשביעי ומגלה
 בשביעי ומביא קרבנותיו בה ואם גלח בה מביא קרבנותיו בו ביום דב
 10 ר' עקיבא אמ' לו ר' טרפון מה בין זה למצורע אמ' לו שזה טהרתו תלויה

l. 21. [ללקרבאן] The two dots indicate that the first ל is to be deleted.

l. 23. Num. 6. 9-12.

l. 24. [חציר] Read חצור infinitive of حَضَرَ was present.

Fol. 17 a, l. 3. *Sifre Zuḡa*, ad loc. (ed. Horovitz). See Yalkuṭ.

l. 4. *Sifre Numbers*, section 28 (p. 9 b). The part irrelevant to our subject is omitted here. See also Keritot 9 a and Bemidbar rabba 10, 13.

l. 7. Num. 19. 12. This verse does not refer particularly to a Nazarite but to any one who comes in contact with a dead body.

l. 8. Nazir 44 b. Read תגלחת.

l. 10. [תלויה] The following clause fell out after this word by homoioteleuton: בימיו ומצורע טהרתו תלויה.

בתנלחתו אינו מביא את קרבנותיו אלא אם כן היה מערב שמשו'
 פאן אתפך יום סאבעה סבת או עיד יוכר דלך אלי גדה לקו' ביום טהרתו
 ביום הזאתו בשביעי אין לי אלא בשביעי שמיני תשיעי עשירי מנין
 תלם לומ' יגלחנו אין לי אלא ביום בלילה מנין תלם לומ' יגלחנו אין לי אלא
 15 תנלחת טמאה תנלחת טהרת מנין תלם לומ' יגלחנו מיכן אמרו תנלחת
 טמאה באיוצד מנלח ואחר כך מביא ואם הביא ואחר כך גולח לא יצא
 וביום השמיני יביא שתי ת' וג' פתכירה איהם ולדלך נפאיר תקצינא
 שרחהא פי אלמדכל אלי הדא אלכתאב והביא יקתצי אלגוב עליה אתיאן
 דלך בנפסה לקו' מלמד שהוא חייב בטיפול הבאתן עד שיביאם אל הכהן
 20 אל פתח אהל מועד: מאשר חטא על הנפש פיקתצי ננאיתה עלי נפסה
 בקלה אחתראסה מן אלנאסה במית לקו' ר' אלעזר הקפר אוז' וכי באיו
 נפש חטא זה שצריך כפרה שצוער עצמו מן היין צריך כפרה קל והומר
 למצער נפשו מן כל דבר ר' ישמעאל אוז' בנויר טמא הכת' מדבר שג'
 וכפר עליו מאשר חטא על הנ' שמיטמא למתים וקדש את ראשו

17 b

ביום ההוא והויר ליי' את ימי נזרו יונג אן יכון אול איאם אלנסך מן יום אל
 חלק אעני אליום אלסאבע לקו' ומצאנו למדים שמתחיל למנות מיום שגולח

l. 12. *Sifre, ibid.* Insignificant variants.

l. 15. [טהרת] Read טהרה.

l. 17. [פתכירה] This may be infinitive fifth conjugation of *חָרַךְ*. But the construction is rather awkward. It would be more natural to read פיתכירה imperfect: *he shall choose, or select it*. [תקצינא] This is fifth conjugation of *צָמַח* which has the same signification as tenth.

l. 18. [אתיאן] Infinitive first conjugation of *אָיַן*.

l. 19. *Sifre Numbers*, section 29 (p. 10 a). See Bemidbar rabba 10, 14.

l. 21. *Sifre, ibid.*, section 30. See Nazir 19 a. Some phraseological variants.

l. 22. [זה] *Sifre* has *בה* which cannot be correct. [שצוער] Read שציער. [היין] The following clause fell out after this word by homoioteleuton: והלא דברים ק"ו ומה אם המצער נפשו מן היין

Fol. 17 b, l. 2. *Sifre, ibid.* Read נמצאנו.

והימים הראשונים יפלו אן כאן קר תבקי איאמא מן איאם נסכה לקו' והימי
הראשונים יפלו אן כאן קר תבקי איאמא מן איאם נסכה לקו' והימים הראשונים
5 יפלו וג' מי שיש לו אחרונים סותר את הכל מנין שאם אמר הריני נזיר מאה
יום נטמא ביום מאה חסר אחד סותר את הכל תלמ' לזמ' והימים הראשונים
יפלו וג' פאן אבל שי ממא יכרג אלכרם לא יהדר דלך מא מצי מן זמאן נסכה
בל יגלד וכמא סנשרה דלך פימא יסתאנק' אלשריעה אלה מנה
תאמר אי נאסך כמלת איאם נסכה אן יאתי פי יום כמאלהא אלי באב
כבא אלמחטר נ ארם מן אלננס מנהא חמלא אבן סנתה צחיחא ללצעידה
ורכלה אבנת סנתהא צחיחא ללצעידה וכבשא צחיחא לרבה אלסלאמה וסלה
פטיר גראדק פטיר מלתותה ברהן ורקאק פטיר איצא ממסוחא ברהן וברהם
ומואנהם פיקדמהם אלאמאם בין ידי אללה ויענע רכותה וצעירתה ואלכבש
יענעה דבה אלסלאמה ללה מע סלה אלפטיר תם יענע אלבר ואלמוזאג אלדי
15 מעהא ויחלק אלנאסך ענד באב כבא אלמחצר שער ראסה ויאכרה ויטרהה
עלי אלנאר אלתי תחת דבה אלסלאמה ויאכד אלאמאם אלרדאע מטבוק מן
אלכבש וגרדקה ורקאקה מן אלפטיר וידע דלך עלי כפי אלנאסך בעד חלקה
שערה ויחרכהם תחריכא בין ידי אללה וליכן קדכא ללאמאם מע קן אלתחריך

l. 3. *Ibid.*, section 31. See also Nazir 19b. Some phraseological variants.

l. 4. [אן] This sentence as far as 'יפלו וג' (l. 5) should be omitted as dittography.

l. 8. [יגלד] The slanting line over י evidently represents a *ḡamma*.

l. 10. [אלמחטר = المحضر] Ḥ is now and again confused with ṣ in Jewish Arabic, and sometimes even in manuscripts written by Mohammedans. This is no doubt due to the pronunciation of these letters. In colloquial Arabic ظه^{oo}ر midday is pronounced *ḡuhr*, as if it were فُ^{oo}هر. Similarly, نظ^{oo}ارة glasses, spectacles, is pronounced *naḡḡara* as if it were ن^{oo}ظار. On the other hand ظ^{oo}ابط a police officer is pronounced *zābiṭ*, as if it were ظ^{oo}ابط.

l. 11. [ורכלה] This is correct, as it is ر^{oo}حله. Sa'adya's רחלה (Num. 6. 14) is an error that crept into a copy written in Arabic characters.

l. 17. [וידע] A by-form to ויענע. This confusion is not infrequent in Arabic, and is certainly due to the pronunciation. Thus in modern Arabic some words are spelt indifferently with د or ض, as, for instance, ا^{oo}ودة a chamber is sometimes written ا^{oo}وضة.

וסאק אלרפיעה ובעד דלך ישרב אלנאסך כמרא כק' זאת תורת הנזיר ביום
 20 מלאת וג' והקריב את קרבנו ליי' וג' וסל מצות וג' והקריב הכהן לפני יי' וג'
 ואת האיל יעשה וג' ונלה הנזיר פתח וג' ולקח הכהן וג' והניף אתם הכהן תנופה
 ל וג' קול ביום מלאת ימי נזרו ירידו בה מן לנסכה וזמנא מתדורא לא נאסך
 אלהר לקו' אחד קרבן נזיר ימים ואחד קרבן נזיר עולם לקרבן טהרה או

18 a

אף קרבן טמאה תלמ לומ ביום מלאת ימי נזרו ירידו בה מן לנסכה וזמנא
 מתדורא לא נאסך אלהר לקו' אחד קרבן נזיר ימים ואחד קרבן לקרבן לא אמר[תי]
 אילא במי שיש לו פסיק לנזירותו ואלחלות ואלרקקים אלתי יגב אן יאתי
 בהא עשרה עשרה לקו' חלות תורה והנזירה שהן באות עשר עשר ואלמסח
 5 פכנצף דאירה לקו' ורקיקי מצ' מש' יכול בדרך המשוחים בשמן כדי קיום
 שמן כאיצד הוא עושה טובל באצבעו ונותן אחת על זו ואחת על זו כמין
 כי ולקח את שער ראש נזרו ונתן על האש קאלו אנה כאן יציף אלי אלשער שי
 מן מרק אללחם וילקי אלנמיע עלי אלנאר לקו' תניא ואחר כך נותן את הרוטב
 ונותן על שער ראש נזרו ומשלח תחת הדוד של שלמים ואם שלח תחת הדוד
 10 של חטאת יצא רוטב מנ' לן אמו קרא אשר תחת זבח השלמים מובח יהיה תחתיו

1. 19. Num. 6. 13-20. 1 fell out before זאת.

1. 23. *Sifre, ibid.*, section 32 (p. 10 b). Omit קרבן in both places. The printed edition has a few biblical words after עולם.

Fol. 18 a, l. 1. [ירידו] The scribe noticed that, owing to the confusion of נזרו, he had copied twice the sentence beginning with this word. He accordingly deleted all these words by marking them with circles.

1. 4. Menahot 76 a.

1. 5. *Sifre Zuṭa* (Yalḳuṭ) *ad loc.* See also Bemidbar rabba 10, 19. [המשוחים] It may be an active fa'ul form, or we have to read המושחים.

1. 8. [תניא וכו'] Nazir 45 b. Instead of תניא the printed edition has נוטל. [נותן] Read ת"ר.

1. 10. [חטאת] The printed text has ואישם after this word. [יצא] A short irrelevant discussion is omitted after this word. [רוטב] The printed text has the more general question מילי מנהני, and the answer is given in the name of Raba.

והניף אתם הכהן תנופה לפני יי' פיקתצי דלך תקריבא אלי נחו כל ואחרה מן אל
 נהאת לקו' מוליך ומביא מעלה ומוריד שני' אשר הונף ואשר הורם וקאלו אמ'
 ה' חיה בר אבא אמ' ה' יוחנן מוליך ומביא למי שהרוחות שלו ומעלה ומוריד
 למי שהשמים שלו הוא במערבא מתני הכי אמ' ה' חמא בר עוקבה אמ' ה'
 יוסי בר חנינא מוליך ומביא כדי לעצר רוחות רעות מעלה ומוריד כדי 15
 לעצר טללים רעים: לפני יי' פי נחה אלמשרק לקו' לפני יי' במזרח שבכל
 מקום שנא' לפני יי' הרי הוא במזרח עד שיפרוט לך הכתוב:
 תם שרחנא אלה אלהאית אלמצדר דכרהא: פאמא אלנ' אלהאית אלנואהי
 אלאולי מנהא תנהא אלנאסך אבל שי מן ענב אלכרם רטבא ויאבסא ושרב
 אלמצטנע מנה מן כמר ומסכר וכל כמר ומסכר ונקיע ואכל פרצן ותניר 20

1. 11. [תקריבא] Read preferably תחריבא, the copyist having mistaken ח for ק and כ for ב.

1. 12. [אמ' וכו'] Menahot 61 a. *Ibid.* 62 a, Sukkah 37 b.

1. 14. [שלו] Insert והארץ before this word.

1. 16. *Sifre Numbers*, section 37 (p. 11 a). A phraseological variant.

1. 20. [פרצן] Although this word is not found in the Arabic lexica, it is attested by its occurrence several times in the Syriac-Arabic glossaries of Bar Bahlul (ed. Duval: 482, bottom; 904, 21; 1421, 1; 1635, 19), and Bar Ali (ed. Hoffmann, p. 184, l. 21). In all these places its meaning is unmistakably *kernel*, or *stone of a grape*, or *raisin*. It is the equivalent of ܦܪܨܢ, ܦܪܨܢܐ, ܦܪܨܢܐ, and ܦܪܨܢܐ. Some of these words, it is true, have more than one meaning; but ܦܪܨܢ is given throughout to denote *kernel*, and where ambiguity may arise, they take care to avoid it, by saying *ܦܪܨܢܐ ܕܥܝܢ ܕܥܝܢܐ* (BB 904, 1635; BA 184). It is thus synonymous with ܦܪܨܢ and may be a dialectic variant thereof, like ܦܪܨܢ. Ḥefeṣ, however, uses it in the sense of *skin of a grape*, as he explicitly states that ܦܪܨܢ is the kernel, and quotes a talmudic passage which says that ܦܪܨܢ is the external part (see below, fol. 19 a, l. 8). We must therefore assume that in the dialect spoken by Ḥefeṣ ܦܪܨܢ signified *a skin of a grape*. Sa'adya also renders ܦܪܨܢ by ܦܪܨܢܐ, but it is not certain what he meant by it. Derenbourg's note to that word is inadequate. Ibn Janāḥ translates ܦܪܨܢ by ܦܪܨܢ and uses, without acknowledgement, the explanation and talmudic passage which Ḥefeṣ gave. From Bar Ali (p. 184, l. 21) it seems that the correct vocalization is ܦܪܨܢ. [ותניר] = ܬܢܝܪ that which is expressed from grapes, &c., including the dregs. As may be seen from the preceding note, this word is taken here to mean *grape-kernel*.

איצא כק' דבר אל בני ישראל ואמ' אלה איש או אשה כי יפלא לנדר וג'
 מיין ושכר יויר וג' כל ימי נ' וג' וינצאף אלי קו' ענבים לחים אלחצרם
 מן אלכרם לקו' לחים להביא את הבסר' יבשים להביא כל יבשים'

18 b

ואלפרק פימא בין לפטה גפן וכרם לאן גפן יכין אנואע אלכרם
 לא נירה וכרם פיעם אנואע שגר אליותון איצא לקו' ויבער מגדיש וער
 קמה וע' כ' ז' וקאל רבות' אמ' רב פפא כרם זית איקרי כרם סתמא לא
 איקרא' פקו' מנפן היין לאן אלכרמה מכעוצה בה לא נירה וורק דלך ניר
 5 מחטור עלי אלנויר ולא מחטורא איצא פי אלערלה ונטע רבעי כל ורק שגר
 אלאשרה לקו' העלים והלולבין מנפנים ומסמדר מותרין בערלה וברביעי
 ובנויר ואסורין באשרה ומתי שרב אלנויר וון כה דרהמא כמר פמא
 פוקה ויגב גלדה לקו' אמ' ר' אלעזר עשר רביעיות נקיט כהנא בתריה
 חמיש סומקאתא וחמיש חידרתא חמיש סומקאתא מאי ניהי נויר ועשי
 10 הפסח הורו ונכנס ומתים נטר רביעית יין לנויר עושי הפסח דאמ' רב יהודה
 אמ' שמואל ארבעה כוסות הללו צריכין שיהו בהן כדי רביעית שהורו
 רביעית יין לא יורה במקדש ונכנס שתה רביעית יין ונכנס למקדש

1. 21. Num. 6. 2-4.

1. 23. *Résumé of Sifre Numbers*, section 23 (p. 8 a).

Fol. 18 b, 1. 2. [לקו' Judges 15. 5. This is the only case where this word introduces a biblical verse. As this verse merely explains the usage of a term and does not form part of the precept, the directness of כק' is not necessary. It is also possible that the words 'וקאל רבות' of the following line are to be omitted, and that the entire passage is a talmudic quotation.

1. 3. Berakot 35 a, Baba meši'a 87 b.

1. 6. 'Orlah 1, 7.

1. 8. Nazir 38 a. With the exception of one or two phraseological variants, all the deviations are scribal errors. See following notes. [נקיט] Insert ה' before this word and רב after it. [בתריה] The printed text has ביריה.

1. 9. [נויר וכו'] The mnemonic sign of the Talmud is more skilful. It is נויר ועושה פסח שהורו במקדש ומתי.

1. 10. [נטר] Read נויר.

1. 11. [שהורו] Insert שתה after this word.

1. 12. [במקדש] This is the mnemonic word of the talmudic text, and if

חייב מיתה דתניא מנין לרביעית דם שיצאה משני מתים שיהא
 מטמא באהל שנא' ועל כל נפשות מת לא יב' חמש חווראתא חלת נזיר
 ומצורע שנפסלו בשבת חלת רביעית שמן לחלה נזיר רביעית שמן לנזיר 15
 מצורע רביעית שמן למצורע שנפסלו רתנן ושאר כל המשקין ברביעית
 ושאר כל המשקין פוסלין את הגויה ברביעית בשבת דתנן ושאר כל
 המשקין ברביעית ושאר כל השפוכים ברביעית להוצאת שבת ותו ליכא
 והאיכא מי רביעית נוטלין ממנה לידים לאחר ואפילו לשנים בפלוגתא^א
 לא קא מירי והאיכא היה מביא פולי של חדש ונותנין לתוכה חצי לג 20
 מים מן הכיור ור' יהודה אומ' רביעית בפלוגתא לא קא מירי ~~והאיכא~~
 והאיכא כמה מים נותנין לתוכה כל שהוא ר' זבאי אומ' רביעית
 בפלוגתא לא קא מירי והאיכא מקוה בר מההיא דבטליה רבנן:
 ושרח

19 a

ושרח הרה אלמעאני פיטול פנכתצרהא ולאן קד עולנא עלי
 בסט שרח אלמקאדיר אעני אלשיעורים פי כתאב אן נפרדה לה: וקאלו

our mnemonic sign is genuine this word should be deleted. Otherwise
 ונכנס should be struck out. As it stands we have a fusion of two different
 readings.

l. 13. [רתניא] Insert ומתו or ומתים before this word. It fell out by
 a sort of homoioteleuton.

l. 16. [ושאר] Delete to the end of the line. This clause crept in
 through confusion with רתנן after בשבת.

l. 18. [להוצאת שבת] These two words which appear to be essential are
 missing in the printed text.

l. 20. [פולי וכו'] Read פולי של חדש.

l. 23. [רבטליה] Read רבטלוה.

Fol. 19 a, l. 1. [עולנא] עֹל usually denotes *be relied upon*. But Dozy
 gives also the meaning *prendre la résolution de*, which suits here admirably,
 though one is not precluded from translating this sentence by וסומכים
 ואנו וכו'. Whether Hefes actually wrote this book or not is unknown.
 No reference is made to it in any other place.

l. 2. [אן] This is a very loose and awkward construction. To relieve
 this sentence from its awkwardness we merely have to delete אן. Perhaps

פי דלך ופי תואיר אלמלקות מן אלה חייב על היין בפני עצמו ועל הענבים
 בפני עצמו ועל החרצנים בפני עצמן ועל הזגין בפני עצמן⁵ אמר רבא אכל
 5 חרצן לוקה שתים משום חרצן ומשום מכל אשר יעשה מנפן היין זוג לוקה
 שתים חרצן זוג לוקה שלש משום חרצן ומשום זוג ומשום מכל אשר
 יעשה מנפן היין: ואיצא ר' אלעזר בן עזריה אומ' אינו חייב עד שיאכל שני
 חרצנים זוגן אחרצן הוא אלפרצן ואלצג הוא אלחב אלרי דאכל אלענב לקו'
 אילו הן החרצנים ואילו הן הזגין החרצנים ואילו הזגנים
 10 דברי ר' יהודה ר' יוסי אומ' כרי שלא תטעה כוונ' של בהמה החיצון זוג והפנימי⁶]
 ענב ענבול וקאלו פי נקיע אלענב משרת ליתן טעם כעיקר שאם שרה
 ענבים במים ויש בהן טעם יין אסור⁷ אלשריעה אלב מנה⁸
 תנהא אלנאסך חלק שער ראסה והו נאסכא בל ירביה כק' כל ימי נדר
 נורו ונ' קאל רבותינו באן אקל זמאן אלנאסך לקו' סתם נזירות שלשים

this word was intended by the copyist to be the ending of כתאב, the
 nunation being written out, as is sometimes the case in manuscripts of this
 kind. See *Jefeth b. Ali's Arabic Commentary on Nāḥūm* (ed. Hirschfeld,
 p. 16, note 7), where זמאן אן = زَمَانًا. In that place, however, אן may merely
 be a case of dittography. Accordingly אן כתאב = كَتَابًا, the accusative being
 erroneously used instead of the genitive, as נארא (fol. 4 b, l. 14). It is also
 possible that some such word as נרנו I hope fell out before אן.

1. 3. Nazir 34 b.

1. 4. [עצמו] Read עצמן וכו'. *Ibid.*, 38 b. We should perhaps
 insert וקאל אתלמוד before this word. This passage seems to be corrupt
 in the printed editions, where it is shorter. This decision is given in the
 name of Abayya, not Raba. The same passage is quoted in Pesahim 41 b,
 where Raba is credited with this decision. See *Tosafot, ibid.*, under heading
 אמר רבא.

1. 7. Nazir 34 b.

1. 8. [זוגן] Does the pronominal suffix refer to חרצנים, or should we
 delete the ך and read זוג in accordance with the talmudic text? [אלפרצן]
 See above, note to fol. 18 a, l. 20. [ואלצג] Read ואלזג.

1. 9. *Ibid.* [אילו החרצנים] Read אילו החיצונים.

1. 11. Nazir 37 a.

1. 12. [אסור] The printed text has חייב.

1. 13. Num. 6. 5.

1. 14. [אלנאסך] Insert תלתין יומא after this word. Nazir
 Mishnah 1, 3. Slight variants.

15 יום אמר הריני נזיר אחת גדולה הריני נזיר אחת קטנה אפילו מיכן
ועד סוף העולם נזיר שלשים יום הריני נזיר יום אחד קטנה הריני נזיר
שעה אחת הריני נזיר אחת ומחצה הריני נזיר שנים הריני נזיר שלשים
יום ושעה אחת נזיר שלשם ואחת יום שאין נזירין שעות פאן קאל
נאדרא באני קד געלט ערד איאם נסכי כערד שער ראסי או ערד אנוא
20 אלרמל ואלתרעאב פיגב נסכה גמיע מא תבקא מן עמרה לקו' הריני נזיר
כשער ראשי וכעפר הארץ וכחול הים הרי זה נזיר עולם ומגלה חתל
אחת לשלשים יום פאן קאל כערד איאם אלסנה פילום לכל יום מנהא
תלתין יום לקו' הריני נזיר כמינין ימות השנה מונה נזירות כמינין ימות
השנה אלו ר' יהודה מעשה היה וכיון שהשלים מת וינצם אלי מעני

19 b

תער לא יעבר על ראשו סאיר אלא לאת אלתי יחט בהא אלשער פאן
סקט בעץ שערה לחכה דלך אלמוצע או דלכה דלכא שרידא פדלך
נאיו לקו' נזיר בין שנלח בין בזוג ובין בתער או שספסף כל שהוא
חייב נזיר הופף ומספסף אבל לא סורק ר' ישמעאל אומ' לא יחוף
5 בארמה מפני שהיא משרת את השער: פאן כאן נאסך אלדער פיגו
תכפף שערה מתי תקל עליה פאדאה מע קרבן יקרבה לקו' נזיר עולם
הכביר שערו מקל בתער ומביא שלש בהמות ומתי טהר פי אלנאם
אלנאסך ברצה ננסה פיגב ענד אלטהארה מנה חלק גמיע שערה
ואן לס תכמל איאם נסכה לקו' נאסר הנזיר בשלש מצות מלשתות
10 יין ומלגלח ומטלטמא למתים והותר בשמים מהם מצוה לגלח

1. 16. Read . . . ויום. [יום אחר.

1. 17. Read [שעה]. Instead of second הריני read זה הריני.

1. 20. *Ibid.*, 1, 4.

1. 23. *Ibid.*, 1, 7. [השנה] The printed edition has החמה in both places.

Fol. 19 b, l. 3. *Ibid.*, 6, 3. Both readings ספסף and פספס are recorded; the former, however, is to be preferred.

1. 6. Nazir 4 a.

1. 9. *Sifre Zuṭa*, as quoted in *Midrash ha-Gadol* (ed. Horovitz, p. 34).

1. 10. [ומטלטמא] Read ומלטמא.

תנלחת מצוה וליטמא על מת מצוה ויסקט ממא מצי מן זמאן
 נסכה תלתין יומא לקו' והתנלחת אינה סותרת אילא שלשים יום ואין
 חייבין עליה קרבן פאמא עד מלאת הימים אן כאן לזמאנה זמאנה
 מחדודא לא נזיר עולם וקו' גדל פרע שער ראשו אן כאן דא שער פאן
 15 כאן אקרעא פילזמה באקי חבם אלזירות לקו' כי נזר אלהיו על ראשו
 בין שיש לו שער ובין שאין לו שער: ואלדי יומי בוגוב אלנסך עליה ואן בני
 ען אלאפאט אלמסתנקה למעאניהא פילזמה אלנסך בעד אן תבון אלאפאט
 אלהי אטלקהא מן פיה תקתצי נסכא לקו' כל כינויי נזירות כנזירות האומר
 איהא נזיר הרי זה נזיר איהא נאה נזיר נזיק נזית ופזית הרי זה נזיר
 20 הריני כזה הריני מסלסל הריני מכלכל הרי עלי לשלח פרע הרי זה נזיר
 הרי עלי כציפרים ר מאיר אומ נזיר וחכמ אומ אינו נזיר פאן אשאר
 באשארה מא תומי אלי הדה אלאשארה פלא ילזמה לדלך ואנבאת אל
 נאסך לקו' בית שמאי אומ כינויי אסורים ובית הלל אומ כינויי
 כינויין מותרין היכי דאמי כינויי כינויין דנזירות תיני ר יוסף מניקנא

20 a

מניזחנא מיפזאנא אלשריעה אלז מנה' תנהא אל
 נאסך אן ידכל אלי חצרה מית כק' כל ימי הזירוי ליי' ע' וג' ינו אן יתולי

l. 12. Nazir 44 a.

l. 15. *Sifre Numblers*, section 25 (p. 8 b).

l. 18. Nazir 2 a. A few slight variants.

l. 21. [כציפרים] The mishnic text has צפרים without כ. From the amoraic discussion on 3a it would appear that our manuscript has preserved the better reading.

l. 23. Tosefta Nazir 1, 1; Nedarim 10 b.

l. 24. [היכי דאמי] Nedarim 10 b. This does not form a continuation of the preceding. It is hardly possible that Hefes had an entirely different text, and it is therefore best to assume that some such word as וקאלו fell out. [מניקנא] The printed edition has מחזקנא. But our reading is preferable. See Nedarim 10 a.

Fol. 20 a, l. 1. [מיפזאנא] Read מיפזחנא.

l. 2. Num. 6. 6.

אלנזיר דפן מת מצוה ארא לם יבן גירה ממן ינוז לה דפנה לקו' כהן גדול
 ונזיר אינן מיטמאין לקרובותיהן היו מהלכין בדרך ומצאו מת מצוה
 5 ו' אליעזר אומ' יטמא כהן גדול ואל יטמא נזיר וחכמ' אומ' יטמא נזיר
 ואל יטמא כהן גדול אמ' להו' ו' אליעזר יטמא כהן גדול שאינו מביא
 קרבן על טמאתו ואל יטמא נזיר שהוא מביא קרבן על טמאתו אמרו לו
 יטמא נזיר ישקדשתו קדושת שעה ואל יטמא כהן שקדשתו קדושת
 עולם: וקאלו איזה הוא מת מצוה כל שאין לו קוברים קורא ואחרין
 10 עונין אתו זה הוא מת מצוה: וינצאף אלי תחרים דנוה במית דנוה איצא
 בדמה או באן וזן כמסין דרהמא פמא פוקה וינגס איצא מן גזו מן מית
 מקדאר זיתונה פמא פקחא לקו' פי דלך ופי גירה עלי אילו טמאות הנזיר
 מגלח על המת ועל כוית מן המת ועל כוית נצל ועל מלוא תרוד רקב
 ועל השדרה ועל הגלגלת ועל איבר מן המת ועל איבר מן החי שיש עליהם
 15 בשר כראוי ועל חצי קב עצמות ועל חצי לג דם ועל מנען ועל משאו ועל
 אהלו ועל עצם כשעורה וסנשרח הרא אלקול פי אלשריעה אלב מן אל
 פצל אליט וקאלו פי שרח אלרקב תנו רבנן איזה הוא מת שיש לו רקב
 מת שנקבר ערום בארון של שיש על גבי רצפה של אבנים זה הוא מת
 שיש לו רקב ואיזה הוא מת שאין לו רקב נקבר בבסותו בארון של שיש
 20 על רצפה של אבנים זה הוא מת שאין לו רקב אמ' עולא אין רקב אילא
 הבא מן הבשר ומן הגידים ומן העצמות וקאלו תנו כל שבמת מטמא חוין

l. 3. Nazir 47 a. Some interesting variants. See *Sifre Numbers*, section 26 (p. 9 a).

l. 9. 'Erubin 17 b, Yebamot 89 b, Nazir 43 b; see also Semahot 4, 29.

l. 10. [זה] Insert אין before this word. It probably fell out, because in the manuscript it resembled אתו.

l. 11. [או] Read ו.

l. 12. Nazir 49 b.

l. 15. [משאן] Read משאו.

l. 16. [אהלו] Read אהל.

l. 17. Nazir 51 a. There are some variants, and our manuscript offers superior readings.

l. 20. [וזה] Delete the ו.

l. 21. *Ibid.* The printed text has תנן התם instead of תנו, and טמא instead of מטמא. Niddah 55 a has מטמא, while Ohalot 3, 3 has טמא.

מן השנים ומן השער והצפורן ובישעת חבורן הכל טמא: ושריעה
אלנאסך פגיר לאומה פי הדא אלומאן דליל דלך קול רבו' כל נזיר עד
שלא חרב בית המקדש נזיר משהרב בית המקדש נזיר משהרב בית
25 המקדש אינו נזיר: תם שרחנא אלז' אלשראיע אלמצור דכרהא

20 b

פאמא אלקסם אלמתצמן ז' שראיע אואמר:
אלשריעה אללאלי מנה' תאמר אלוארד איפא באלנרר כק' מוצא
שפתוך תשמר ועש' וג' קולה ועשית יקתצי חתה עלי פעל מא נדר בה
ויקתצי דלך אלזאם בית דין חתה עלי פעל דלך מע עלמהם בה אן כאן פעל
5 דלך ממכנא לקו' ועשית הרי זו אוהרה לבית דין שיעשוך' וקאלו פי
שרה דלך כאשר נדרת זה נדר לי' אלהיך אלו ערכין וחרמין והקדש
נרבה זו נרבה כאשר נדרת זה הקדש וברק הבית בפך זו צדקה:
וקר שרחנא דלך פי אלפעל אלאול' אלשריעה אלז' מנה
תאמר רגל נדר נדרא ללה או חלף ימינא ליעקר עקדא עלי נפסה אלא
10 יבדל קולה בל יעמל נמיע מא ברג ען פיה כק' איש כי ידר נדר לי' או
הש' וג' אלעאקל יגב עליה איפא בנדרה ואן כאן בן זב' סנה ויומא ואחדא
וקת נדר דלך פאן כאן לא עאלם במא נדר ולא עאקל סקט נדרה' פאן
כאן זמאנה אקל כן זב' סנה ויומא ואחדא פאן כאן עאקלא פלא יגב
נדרה פאן כאן קאדרא עלי פעלה פאן כאן והו נאדר אבן זב' סנה ויומא
15 ואחדא פמא פוקהא ועאקלא וימכנה פעל מא נדר בה פקאל לם אכן מחצלא

l. 23. Nazir 32 b. The Mishnah has כל שנזר.

l. 24. The last three words of this line and the first of the following are to be deleted as dittography.

Fol. 20 b, l. 2. [אלוארד] Read אלנאדר. Deut. 23. 24. [מוצא וכו']

l. 5. *Sifre Deuteronomy*, section 265 (p. 121 b).

l. 6. *Ibid.*

l. 7. [כאשר נדרת] Read אשר דברת. The confusion arose through this clause in the preceding line.

l. 10. Num. 30. 3.

l. 15. [מחצלא] חַצֵּל = *he discriminated, differentiated*. I translated this participle by a noun to suit the Hebrew idiom, as לא הייתי מבחין would not bring out the exact force of the original.

ללרי נדרת בה ולא קיים בה ולא עארפא בה פילום איפאה נדרה לק' בן יז
 שנה ויום אחד נדריו נבדקין בן יז שנה ויום אחד נדריו נבדקין בן יז שנה
 ויום אחד נדריו קימין ובודקין כל שלש עשרה קודם הזמן הזה אף על פי
 שאומרי' יודעין אנן לשם מי נדרנן ולשם מי הקדשנן אין נדרהין נדרין ואין
 הקדישן הקדש לאחר הזמן הזה אף על פי שאומרי' אין אנן יודעין לשום
 מי נדרנן ולשום מי הקדשנן נדרהין נדרים והקדישן הקדש וק' כי תידר
 נדר ליי' ויקתצי שרח אלנדר וביאנה ואן יכן אסם אללה אליה מצאפא ודבר
 אלאסתתני אן כאן אלנדר באסתתני או כאן אלמעני אלרי נדרה ממכנא פאן
 כאן לא ממכנ פאלנדר סאקטא לק' את שהסמייך את נדרו בדבר שאיפשר

21 a

לו הרי זה נדר ואם לאו אינו נדר: ואפצאח באלנדר ואלאשארה אליה
 סוא פי אלנדר לק' האומר קונם קונם קונם הרי אילו כנויים לקרבן חרק
 חרך חרף הרי אילו כנויין לחרם נזיק נזיק ופזיח הרי אילו כנויין לנזירו^ת
 פאן כאנת אלאשארה אשארה אלי הדה אלאשארה פלא יגב לדרך פעל
 5 אלנדר לק' בית שמאי אומ' כינויי כנויין אסורין ובית הלל אומ' כינויי
 כינויין מותרין היכי דאמי כינויי כינויים תיני רב יוסף מקנימנה
 מקנינא מקניסנה כינויי כינויים דחרם תיני רב יוסף טפשא הרקיא

1. 16. *qāṣ* = *he compared, measured*. No adjective *qāṣ* is elsewhere recorded. [בן יז וכו'] Niddah 45 b.

1. 17. Delete the last four words of this line and the first three of l. 18.

1. 19. [אנן] The Aramaic form of the first person plural is quite clear in our manuscript for all these cases.

1. 22. [וידבר] This infinitive is still governed by *yiqṭaṣ*. The clause *ואן יכן אסם . . . מצאפא* is inelegantly thrust in between the two infinitives.

1. 23. [אִסְטִינָא] = *exception, or condition*. [או] This word is scarcely correct, as the following clause does not form a parallel to the preceding. We should perhaps read *וידבר אן*.

1. 24. *Sifre Numbers*, section 153 (p. 56 a).

Fol. 21 a, l. 2. Nedarim 10 a.

1. 5. *Ibid.*, 10 b. Some of the words are corrupt.

1. 6. [תיני] Insert *נדרים* before this word.

1. 7. [מקנינא] Read *מקנינא*, or *מקניחנא* in accordance with the other

הרפ"א הרפ"א: כינוי כינויים דמירות תני רב יוסף מנויה מפואנא
 ואלקול פי אלאימאן כדלך איצא לק' כינוי כינוין דשבועה היכי
 דאמי שבואל שביסאל שקוקאל שבואל בן גרשום משמע אילא 10
 שבובאל שביתאל אמ' שמואל שיכתא לא אמ' כלום אשקיא לא
 אמ' כלום כל קרנאסא לא אמר כלום: ואלאימאן עלי סלב שי או
 אינאב שי ואלאימא אליה סוא פי אלאימאן לק' שביתה שקוקא נדרה
 במוהה הרי אילו כינויים לשבועה ואלנדור ואלאימאן תלום אלנאדר
 ואלהאלף מתי ואקף אללפ' בהא לניתה לק' עד שיהא פיו ולבו שוים 15
 לאסר אסר על נפשו ימין יקתצי חצר אלנפס ואנקבאין ען פעל שי
 יגוז פעלה לא אן יחל בדלך אשיא מחרמה עליה לק' איזה הוא
 אסר ביום שחרב בו בית המקדש ביום שמת בו ר' פלוני הרי עלי שלא
 לאכל בשר ושלא לשחת יין ואיצא יכול נשבע לאכל נבלות וטרפות
 ושקצים ורמשים קורא אני עליו ככל היוצא מפיו יעשה תלם לז' לאסר 20
 אסר על נפשו לאסור את המותר ולא להמר את האסור ולא יגוז

words. **הני מפשאה** The Wilna edition has **תני**. But according to Rashi it is obvious that the first word ought to be **תני**. That commentator takes the second word as the name of a scholar. But our manuscript would seem to indicate that **רב יוסף** fell out in the printed text. It appears that both readings are corrupt. Read **הרקיא** or **חרקים**.

l. 8. **הרפ"א** Read **חרפ"א** or **חרכ"א**. **הרפ"א** Read **חרפ"א** or **חרכ"א**. **הרפ"א** Read after this word: **מנוקנא מנוחנא מפוחנא**. See above, notes on fol. 19 b, l. 24, and fol. 20 a, l. 1.

l. 9. *Ibid.*

l. 10. **שביסאל** The printed text has **שביתאל**, which is more correct, as may be seen from the following line.

l. 11. **אמ'** Insert **שקוקאל** before this word.

l. 12. **כל** This word ought to be deleted as dittography.

l. 13. **שביתה** *Ibid.*, 10 a. Read **שביתה**.

l. 14. **במוהה** The printed edition has **במוהי**.

l. 15. Yerushalmi Nedarim 1.

l. 17. Tosefta Nedarim 1, 4. The phraseology is entirely different here.

See Yerushalmi Nedarim 1, 1.

l. 19. *Sifre Numbers*, section 153 (p. 56 a). Insignificant variants.

l. 21. **להתיר** Read **להמר**.

יגום עלי גירה כנומה עלי נפסה לקו' על נפשו הוא אוסר ואינו אוסר
על אחרים פאן חלף עלי שי ממתנעא פיגב גדרה לחלפה עלי גיר

21 b

ממכן לקו' אמו' יוחנן נשבע שבועה שלא יישן שלשה ימים מלקין
אתו ויושן לאלתר פאן נדר אלא יאכל אלשי אלפלאני לאנה יודיה וכאן לא
יודיה כל ינפעה פנדרה לרלך מנפסך לקו' קונם בצל זה שני טועם שהבצל
רע ללב אמרו לו והלא כופרי יפה ללב הותר כופרי ולא כופרי בלבד
5 הותר אילא בכל הבצלים מעשה היה והתירו' מאיר בכל הבצלים
פאן נדר אלא יסכן בית בעינה פיתרם עליה סכאנה ואלגרפה איצא
אלתי עליה לקו' הנודר מן הבית מותר בעלייה דברי' מאיר וחכמ'
אומ' עליה בכלל הבית הנודר מן העליה מותר בבית פאן נדר אלא
יאכל אללחם פיתרם מעה אלכבד ואלטחאל ואלגוף איצא לקו' הנודר
10 מן הבשר אסור בכל מיני בשר ואסור בראש וברגלים ובקנה ובכבד
מפני שהן קרבים ואסור בעופות ומותר בדגים וחגבים: פאן נדר
אלא שוא ולם תעקר ניתה כל שוא פיתרם עליה אללחם אלמשוי' פאן
קאל מא ישוא פיתרם עליה כל משוי' וכדלך אלקול פי אלמאלח לא

1. 22. [יגום] The omission of אן after יגום is hardly defensible, and is unusual with Ḥefeṣ. [על נפשו וכו'] *Ibid.*

Fol. 21 b, l. 1. Nedarim 15 a, Shebu'ot 25 a.

1. 2. [ויישן] Read ויישן.

1. 3. [קונם וכו'] Nedarim 66 a. [שני] This is an interesting contraction of שאני. Comp. לִאֲחִי for לָחִי (1 Sam. 25. 6).

1. 6. [סכאנה] For the infinitive سَكَّان see Dozy, s. v. The usual infinitive of سَكَّن is سَكُون.

1. 7. Nedarim 56 a. Ḥefeṣ naturally decides according to the opinion of the sages.

1. 9. *Ibid.*, 54 b.

1. 10. [ובלב] After this word the printed text has ובלב.

1. 11. [מפני שהן קרבים ואסור] These words are missing in the printed edition which continues with ועופות. [ברגים] That text has בבשר דגים.

1. 12. [אלא] Insert יאכל after this word.

יחרם עליה אלא מאלה אלסמך פאן קאל כל מוא מלה פחרם עליה כל
 ממלות ואלעלה אלהי לאנלהא יחרם עלי¹⁵ אלשבין כתרם אסתעמאל דלך
 אלשבין פימא אמתנע באלנדר מנה לקו' הנודר מן הצלי אין אסור אילא
 בצלי של בשר דב ר' יהודה עלי שני טועם אסור בכל הצלויין מן המלות
 אין אסור אילא מן המלות של דג מלוח שני טועם בכל המלוחין וקול' לא
 יחל דברו פינב אמתתאל פעל דלך מע אלאמכאן פי אלומאן אן כאן קד
 חד לה זמאן פאן כאן מבהמא פיקרם פעלה לילא קטע ען פעלה קאטע
 מא וקר שרחנא דלך פי אלפצל אלאול ומעני לא יחל דברו איצא פיקתצי
 פין ולא ינב ללנאדר אן יפין נדרה ואן כאן הכים פי נפסה בל גירה
 יפצה לקו' לא יחל דברו שלא יעשה דבריו חולין הרי שהיה הכם יפר

22 a

לעצמו והדין נותן אם מפר לאחרים לא יפר לעצמו תלמו לומ לא
 יחל דברו ואיצא הוא אינו מוחל אבל אחרים מוחלין לו וקאלו איצא
 דבריו אינו מוחל אבל מוחל חפצי שמים ככל היוצא מפיו יעשה
 פיקתצי לזום פעל אלנדר אן כאן אלנדר ינו אן ינדר מתלה וממכן פעלה:
 אלשריעה אלג מנה⁵ נדור אלנסא אלבלג ולא בלג והן צנוף כמס

l. 15. [עלי] The suspended ה is perhaps a remnant of הרא, as it is quite impossible to read עליה.

l. 16. Nedarim 51 b. The word הנודר is missing in the printed edition, as this paragraph is a continuation of the preceding.

l. 17. [עלי] Read צלי.

l. 18. [בכל] Insert אסור before this word.

l. 22. [פי נפסה] This seems to be a Hebraism representing בעצמו, since this law applies also to an actual sage, and not merely to one who considers himself as such.

l. 23. [לא יחל וכו'] *Sifre Numbers*, section 153 (p. 56 a). See Nedarim 81 b. [יפר] Insert לא before this word.

Fol. 22 a, l. 2. Hagigah 10 a, Berakot 32 a. The confusion of מחל with מוחל, due to the *plene* spelling מיחל, is also in Hagigah. מיחל is the only correct reading.

l. 3. Nedarim 16 b. Read מיחל in both places.

l. 5. [אלבלג] This is obviously intended as a broken plural of بَالِغ. Such a form is, however, nowhere else recorded.

מנהן נאריה פי בית אביהא לא באלג ולא מזונה ומנהן נאריה מקדסה
 ומנהן מזופזה אלי בעלהא: ומנהן ארמלה ומטלקה:
 פאלאולי מנהן תאמר אית אמראה נדרת נדרא ללה או עקרת
 עקרא פי בית אביהא פי חאל צבאיהא פסמעהא אבוהא ואמסך
 פנמיע נדורהא ועקורהא אלדי נדרתה ועקרתה עלי נפסהא תאבת פאן
 10 נהרהא פי יום סמע דלך פנמיע נדורהא ועקורהא תיך ניר תאבתא ואללה
 ינפר להא אד אנתהרהא אבוהא בק' ואשה כי תדר נדר ל' וג' ושמע אביה את
 נדר' וג' ואם הניא אביה אות' וג' ואלומאן אלדי פיה ינוו ללנאריה אן
 תנדר נדרא ינב פעלה מן ניר אן יסתקרא עקלהא פאבנת יב סנה ויומא
 15 ואחדא פמא פוקה אללהם אלא אן יערין לעקלהא כלל ונקין פאמא אלתי
 מנהן להא יא סנה פמא דונהא פלא יצח נדרהא פאדא אנסלך ענהא
 יא סנה פנדרת פיבחת ען מקדאר עקלהא פי נמלה אלסנה אליב פאן
 כאן עקלא צחחא סאלמא פיפין אבוהא נדורהא אן אכתאר דלך
 ודלך אן כאן מא נבת פי אלעאנה מנהא ישערתינ סוד פאן אמסך
 20 ענהא תבת נדרהא פאן כאנת דאת עקל סכיף פנדרהא לא תאבת

l. 6. [מזונה] This word is rather illegible in the manuscript, but the conjecture *مَزَوْنَةٌ* is self-evident. [מקדסה] This is a Hebraism representing מקדשת.

l. 7. [מזופזה] Read *מזופזה*.

l. 8. [אית] Vulgar spelling of א'יה.

l. 9. [ואמסך] Sa'adya adds the word *ענהא* after this one. Indeed the Arabic idiom requires it, and it corresponds in this case to Hebrew *לה*. This word probably fell out by oversight, as Hefes uses it below, l. 20, and on fol. 23 b, l. 4.

l. 11. [תיך] Vulgar spelling of *تَلَّكَ*, due to pronunciation. In a number of Genizah fragments I found this system of transliteration. Thus *الشاني* becomes *אתני*. [תאבתה] Read *תאבתה*.

l. 12. Num. 30. 4-6.

l. 14. [אבנת] Tenth conjugation of *عَرَّأَ* *he investigated*. Incorrect spelling of *بِنَتْ* by wrong analogy of *اِنَّ*. It may also be a vulgar spelling of *ابنة*.

l. 15. [כלל] This may represent *كَلَّلَ* *dullness*, or *خَلَّلَ* *deficiency*. The latter is naturally preferable by the side of *نقص*.

פאלעאקלע מנהן להא יב סנה ויומא ואחר פמא פוקה תרעי
נהלא במא כאנת נדרת פי הדא אלומאן ואנהא לא תפי בה פילומהא
מא נדרת אן כאן פעל דלך פי אמכאנהא : ואלקאילה ולהא יא פמא

22 b

פמא דונהא באנהא עאלמה באלדי נדרתה פלא ילזמהא נדרהא לקו'
בת יא עשרה שנה ויום אחד נדריה נבדקין בת שנים עשרה שנה ויום
אחד נדריה קימין ובודקין כל שנים עשרה בן יב שנה ויום אחד נדריו
נבדקין בן יג שנה ויום אחד נדריו קימין ובודקין כל שלש עשרה קודם לומן
5 הוה אף על פי שאמרו יודעין אנן לשם מי נדרנן ולשם מי הקדישן אין נדריהם
נדריהם נדרים ואין הקדישן הקדש אחר הומן הוה אף על פי שאמרו אין אנן
יודעין לשום מי נדרנן ולשום מי הקדישן נדריהן נדרים והקדישן הקדש'
ואדא כאן מן אלעזחית אלבין קול רבו' בת יב שנה ויום אחד נדריה קימין
ובודקין כל יב קולא מעולא עליה לא מרי פיה וגב קול שמואל אין בין נערות
10 לבגרות אילא ששה חדשים בלבד אן תכן הדה אלשהור אלכת ישיר בה
אלי אלנצ' אלאכיר מן אלסנה אל'ב ואן אלבדיקה פי זמאן סנה אל'ב ען מענאיין
פי אלנצ' אלאול מנהא מסאלתהא עמא נדרת ולמן אלנדר ופי אלנצ' אל
תאני מנהא פיפחין ען הדא וען אמאראת אלדראך מן דלך נבאת
שער אסור פי אלעאנה מנהא אקל דלך שערתיך אד דלך מוכנא פי נוארי
15 סנהן יא סנה ונצ' לקו' תינוקת שהביאה שתי שערות חיבת בכל מצות

l. 21. תרעי Eighth conjugation of דעל he claimed.

Fol. 22 b, l. 1. פמא To be omitted as dittography.

l. 2. Niddah 45 b. The form of the first person plural is Aramaic. See above, note on fol. 20 b, l. 19.

l. 6. נדריהם To be deleted as dittography.

l. 8. Loc. cit.

l. 9. Niddah 65 a, Ketubot 39 a.

l. 11. אלנצ' Perhaps vulgar *nus.* See above fol. 3 b, l. 15, and fol. 16 a, l. 12.

l. 15. Niddah 52 a. The part unnecessary for our purpose is omitted in the quotation.

האמורות בתורה פאן כאן קר נבתת שערתינ יגב עליהא מא תנדרה
ממא יצח פעלה ואן כרה אבוהא דלך פאן כאן לס ינבת להא דלך נאיז
לואלרהא פסך נדורהא פי זמאן אלסנה אליב וקאל רבות' משל משלו
חכמ' באשה פנה בוהל' וצמל פנה עודה תינוקת בוהל' אילו ימי
הנעורים ובוזו ובוזו אביה זכאי במציאתה ובמעשי ידיה ובהפר 20
נדריה צמל בזמן שבגרה אין לאביה בה רשות ואלצבאיא יסמון
תינוקות איצא מנד ולאדהן ואל' נבאת שערתינ פי אלעאנה מנהן לקו'
תינוקת בת יום אחר מטמא בגרה וקאלו האב אינו מפר בבגד' וקר

23 a

דהב קום אלי אן אלסתה אלאשהר אלתי דכרהא שמואל הי בער אליב
סנה ופימא תקדם מן אלקול' כפאיה עלי צחה מא דכרנאה ושרח
אלנדר ואלאסר פי הרה אלשריעה ופי אלתי תקדמתהא איצא
סואן לא כלף בינהמא וקאל רבות' ואסרה אסר אין אסר אילא
5 שבועה כן הוא אומ' או אסרה אסר על נפשה בשבועה וקו' ושמע
אביה פיפצל מנהם אלטרש לקו' להוציא את החרש והחריש לה
מע עלמה כנדר אבנתה במא נדרת' פאן טן באן אלנאדר דלך סוא
אבנתה תס צח באנהא אבנתה פלה פסך דלך פי וקת עלמה בה לקו'
שאם נדרה בתו ואמר סבור הייתי שהוא אשתי הרי זה יחזור
10 ויפר שנ' והחריש לה עד שיהא מתכוין לה ואן אמסך ענהא סאעה

l. 18. *Ibid.*, 47 a. A few phraseological variants.

l. 19. *בוהל* The printed text has *בוהל*. As in Arabic *بَاهِلَةٌ* denotes an unmarried woman, it is quite possible that the original reading is preserved here.

l. 21. *ואלצבאיא* *صَبَايَا* is plural of *صَبِيَّة* a girl.

l. 23. *האב וכ'* *Ibid.*, 43 b. *Nedarim* 70 a.

Fol. 23 a, l. 4. *Sifre Numbers*, section 153 (p. 56 b).

l. 5. *כן* Read *וכן* in accordance with customary usage.

l. 6. *Loc. cit.*

l. 9. *Loc. cit.* See *Nedarim* 86 b, *Tosefta* 7, 4. A few phraseological variants.

או אגאז להא תם בדא לה מן ראיא פלא יגוז לה דלך לקו' וקמו כל נדריה
 וכל אסר וג' שאם נדרה וקיים וחזר והפר שומע אני יהא מופר מה
 אני מקיים וקמו כל נדריה עד שלא יפר או אף משיפר מה אני מקיים
 והפר את נדריה עד שלא קיים או אף משקיים תלמו לזמ' יקום מגיד
 15 הכתוב שבל נדר שאם קיים שעה אחת אינו רשאי להפר: פאן אגאז
 נדרהא או תבתה תם בדי לה עקיב אלראי פלה דלך לקו' בעי רבה קיים
 ומופר ליכי בבת אחת מה הוא תא שמע דאמ' רבא כל שאינו בזה אחר זה
 אפילו בבת אחת אינו חייב פאן אטלק להא דלך זמאן סאעה פאלנדר
 תאבת לקו' נימא קיים ליכי שעה ואני מופיר ליכי לאחר שעה כמאן דאמ'
 20 לה קיים ליכי לעולם ואם הניא אביה אותה ביום שמעו וג' פיקתצי זגרהא
 פי יום סמאעהא פיה או בלגה דלך פאן בלגה נדרהא או סמעה קבל סלך

l. 11. [בדא לה] Something obviously fell out after these words which can only mean *it appeared to him, it seemed fit to him*. We may supply after לה some such word as عدل, and take מן in the sense of عن. It is also possible to insert after ראיא the phrase بدل ذلك or عقب ذلك, and consider מן as the casual point of departure, the origin and source of a thing (see Wright, *Arabic Grammar*, vol. II, p. 131 E). A third possibility is to emend מן into עקב, and thus reduce the sentence to the form in which it occurs below, l. 16. Although the last suggestion appears to be the simplest, it is graphically the unlikeliest. For it is more reasonable to assume that some words were overlooked, rather than that the copyist misread עקב for מן. [וקמו וכו'] *Sifre Numbers*, section 153 (p. 57 b). Slight variants.

l. 16. [עקיב] An infinitive عقيب is nowhere else recorded. It is, however, impossible to assume that عقيب الراي represents אחת בבית, or תוך כרי רבור, as the sentence would then be corrupt, apart from the difficulty involved in the usage of رای. [בעי וכו'] *Nedarim* 69 b.

l. 18. [חייב] This word is missing in the printed text. The talmudic passage obviously means: *a law which is inapplicable to things done one after another, does not apply to them even when they are done simultaneously*. Rashi is accordingly right in interpreting Rabba's decision to imply that the father is not allowed to absolve the vow under these circumstances. Ḥefes, however, quotes this passage in support of his view that the father has a right to absolve the vow, as may be clearly seen from דלך פלה (l. 16). The addition of the word חייב which he had in his text led him to this interpretation.

l. 19. *Ibid.*, 70 a. A résumé of a long discussion is given here.

אלנהאר פאמסך אלי בעד אנסלאבה פיתבת עליהא לקו' הפרת נדרים
כל היום כאיזנד נדרה בלילי שבת מפר בלילי שבת והשבת עד שתחשך
נדרה עם חשכה מפר עד שלא תחשך שאם חשכה ולא הפר אין יכול להפר

23 b

נדרים
תניא הפרת כל היום ה' יומי בר' יהודה ור' אלעזר בר' שמעון אומ' מעת לעת
אמ' ר' שמעון בן פוי אמ' ר' בן לוי אין הלכה כאותו הזוג פאמא אלמתקדסה
פארא אנתהרהא מקדסהא פי יום סמע דלך או בלגה פנדרהא ועוקדהא ניר
תאבתה פאן אמסך ענהא פקד תבת עליהא כק' ואם היו תהיה לאיש וג' ושמע
5 אישה וג' ואם ביום שמוע אי' וג' פאמא אלדליל עלי אן הרה אלנאריה מקדסה
לא מזופפה קו' ואם היו תהיה לאישה זו ארושה פאן זפהא והי באלג ועליהא
נדר ממא עליה מן אגלה משקה ודלך ממא לא יגוז לה פסכה ואכתאר
טלאקהא מן אגל דלך פידפע אליהא כאלין מאלהא לא מא כתב להא עליה
לקו' כנסה סתם ונמצאו עליה נדרים תצא שלא בכתובה ונדריה עליה
10 פאלנדור אלתי לם תפסך ולם תתבת לקו' ונדריה עליה נדרים שלא הוקמו ושלא
הופרו ויגוז ללבעל אן יקול לזוגתה וקת תוף אליה אני קד פסכת נמיע אלנדור
אלתי נדרת ודלך אלתי יגוז פסכה לקו' ובן הבעל עד שלא תכנס לרשותו אומ' לה
כל נדרים שנדרת עד שלא תכנס לרשותי הרי הן מופרין לכשתיכנס לרשותו

1. 22. *Ibid.*, 76 b. A short clause is omitted. Is that clause an interpolation?

Fol. 23 b, l. 2. [אמ' ר' שמעון וכו'] In the Talmud there is a long discussion between לעת and this sentence. Is the omission accidental, or is that passage an interpolation by the Saboraim?

1. 4. Num. 30. 7-9.

1. 6. *Sifre Numbers*, section 153 (p. 57 a).

1. 7. מִשְׁקָה = *affliction, inconvenience*.

1. 8. כְּאֵין = *pure*. Here apparently it denotes *without increase or addition*.

1. 9. Kiddushin 50 a.

1. 12. [ובן וכו'] Nedarim 72 b. Read [וכן].

1. 13. [לכשתיכנס] Delete the last י. It would be more idiomatic to read משתכנס with printed text.

אין יכול להפר פאן נדרת והי מקדסה לא באלג פיצה אלב ואלבעל נמיעא
 15 לקו' נערה המאורשה אביה ובעלה מפירין נדריה הפר האב ולא הפר הבעל
 הפר הבעל ולא הפר האב אינו מופר ולא ינוז ללאב פסך נדר אבנתה אדא
 כאנת באלג לקו' יפה כח הבעל מכה האב שהבעל מפר בבנר ואין האב מפר
 בבנר ושמע אביה ונ' ביום שמע א' ונ' מסאוי למא תקדם מן קו' ושמע ונ' והניא
 א' ונ' וכדלך שרוחמא וי' יסלח לה פיקתצי נפראן פעלהא אלנדר מן בער עלמהא
 20 באנה מפסוכא לקו' הרי שנדרה ובטלה והלכה ועשתה מזידה מנין שצריכה
 סליחה תלמו לומ' וי' יסלח לה: פאמא אלמזפופה פאלחכם פי נדרהא ופסכה
 כאלחכם פי אלמקדסה מנהן כק' ואם בית אישה נדרה ונ' ושמע אביה ונ'
 ואם הפר יפר ונ' וקו' כל נדר וכל שבועת אסר ונ' פיקתצי פי' אלבעל כפי'
 נדור מקדסה באלנה לא מזפופה וחסב דכרנא דלך פימא מוצא: כל נדר
 25 וכל שבועת אסר ונ' פישיר אלי אלתו מן דלך פיהא חמל עלי אלנפס או עלי אל
 דאת או כליהמא מן דלך לא תדכל אלחמאם ולא תתוין ולא תניב אלי אלפראש

24 a

ולא תאכל לחם ופאכהה ולא תכדמה ומא נתי הרה ממא פי תרכהא שקא
 אלנפס או אלנפס לקו' ואילו נדרים שהוא מפר נדרים שיש בהן עינוי נפש
 אם ארחץ אם לא ארחץ אם אתקשט ואם לא אתקשט וקאלו אין לי אילא דברים
 שיש בהן עינוי נפש דברים שבינו לבינה מנין תלמו לומ' אלה ההקים אשר

1. 15. *Ibid.*, 66 b.

1. 17. *Ibid.*, 70 a.

1. 20. *Sifre, ibid.* [ובטלה] Read either ובטלו (pronominal suffix referring to נדר understood), or ובטל לה, as in printed text.

1. 23. Num. 30. 11-13.

1. 26. [לא] This is rather too elliptical. Read perhaps אלא = אֵל. The assimilated א' would refer to all the following negatives.

Fol. 24 a, l. 2. Nedarim 79 a. Instead of the second נדרים the printed text has דברים.

1. 3. *Sifre Numbers*, section 155 (p. 58 a). Some phrascollogical variants. Instead of לי אין the printed text has לא אמרתי.

5 צוה יי' את משה בין איש לאשתו: ואלתוספה פקאל כל שיש בו עינוי נפש
 בין בינו לבינה ובין בינו לבין אחרים יפר דבר שאין בו עינוי נפש בינו לבינה
 יפר בינו לבין אחרים לא יפר כאיזר קונם שני עושה לפי אבה ולפי אביו לפי
 אחיו ולפי אחי שאני מטילה לבקרך אין יכול להפר מפני שבינה לבין אחרים
 שלא אבחיל ושלא אתקשט ושלא אשמש לך מטתי יפר מפני שבינו לבינה
 10 שלא אמווג לך את הכוס שלא אדיר לך את רגלך שלא אציע לך את חל
 המטה אין צריך להפר וכיפה על כרחה רבן גמליאל אומ' יפר משום שנ' לא יחל
 דברו פאן נדרת באנהא לא תאכל מן תמרה אלבלד אלפללני פנדרהא תאבת
 אד להא אכל תמר גירה וכדלך אלא תאכל מן טעאם יביעה פלאן אד ימכן שרא
 מתלה מן גירה פאן כאן דאך אלנוע לא יוגד אלא ענר דאך אלביע פיגו פסכה
 15 קק' אילו הן נדרי עינוי נפש אמרה קונם פרות העולם עלי הרי זה יפר פרות
 המדינה זו עלי אלא לה ממדינה אחרת פרות חנוני זה עלי אינו יכול להפר
 אם לא היתה פרנסתו אילא ממנו הרי זה יפר' פאן נדרת אלא תאכל
 שי אלא ממא בעלהא מאכלהא וכאן פקירא פיגב תתבית נדרהא אד
 להא אכל בעין אלמבאחאת ללפקרא לק' קונם שני נהנה לבריות אין
 20 יכול להפר ויכולה היא להנות בלקט ובשכחה ובפיאה' ואב בעל או אב
 נהל באן אללה תברך אטלק לה פינ' נדר אלזונה ואלאבנה תם עלם דלך

l. 5. Tosefta Nedarim 7, 1. Some phraseological variants. With the exception of the few scribal errors (see the following notes) our manuscript has preserved some good readings, as compared with those of Zuckerman.

l. 9. [אבחיל] Read אבחול.

l. 11. [להפר] Read [וכיפה] .

l. 14. [אלביע] Read אלבאי' = ^{אלבאי'} .

l. 15 Nedarim 79 b. Some phraseological variants. The name of R. Jose is omitted here.

l. 16. [אלא] Read יביא.

l. 18. [מאכלהא] This = ^{מאכלהא} . There are many other instances where Jewish writers use ^{מאכלהא} in cases where the rules of Arabic orthography would require ^{מאכלהא} with a hamza. Comp. ^{מאכלהא} = ^{מאכלהא} (Ibn Bal'am's *Commentary on Judges*, 20, 28, ed. Poznański).

l. 19. Nedarim 83 b.

l. 20. [ואב בעל] Read . . . ואן.

בעד זמאן פל'ה אן יפסכה פי יום עלם לה פאן סמוע דלך מנהא ולא יעלם
 באנה כאן נדרה תם עלם דלך בעד זמאן פל'ה פסכה פי יום עלמה בה לקו'
 יודע אני שיט נדרים אבל אָיני יודע שיט מפירים יודע אני שיט מפירים
 25 אבל אָיני יודע שזה נדר ר' מאיר אומ' לא יפר וחכמ' אומ' יפר' פאן נדרת
 אלא תאכל שי כן אלאשיא זמאן שהר מתלא פאטלק להא מנה אסבועא

24 b

פקד פי' בדלך נדרהא לקו' ואם הפר יפר אתם ולא מקצתם פאן נדרת אלא תאכל
 מן נועין מן אלטעאם פאטלק להא אכל אחרהמא פאלנוע אלאכר איצ'א מטלקא
 פאן תבת נדרהא פי אחרהמא פיתבת איצ'א פי אלנוע אלאכר אן כאן נדרהא כליהמא
 מעא לקו' נדרה מן התאנים ומן הענבים הפר לה הבעל לתאנים ולא לענבים לענבים
 5 ולא לתאנים בלו מופר קיים לה לתאנים ולא לענבים לענבים ולא לתאנים כאילו
 קיים מומת בזמן שהוא נדר אחד אבל אם אמרה תאנה שני טועמת ועוד ענבה
 ונישאל להם והתיר לה לתאנים ולא לענבים לענבים ולא לתאנים אסר לה לתאנים
 ולא לענבים לענבים ולא לתאנים הפר לה בעלה לתאנים ולא לענבים לענבים
 ולא לתאנים וקיים לה לתאנים ולא לענבים לענבים ולא לתאנים הקיום במקומו

l. 22. [פי יום עלם לה] *On the day when he has knowledge* is rather too vague. We should perhaps read ב'ה instead of ב'ה, as in the next line.

l. 24. [יודע וכו'] Nedarim 87 b. מפירים (first)] Insert יפר after this word in accordance with the printed text. Should our manuscript present a genuine variant, the controversy of R. Meir and the sages would refer to both cases.

Fol. 24 b, l. 1. I was unable to locate this passage. It may have formed part of one of the halakic Midrashim.

l. 4. *Sifre Numbers*, section 155 (p. 58 b). If the few scribal errors are disregarded, our text offers superior readings to those of Friedmann's edition. Comp. Friedmann's notes to this passage.

l. 5. בולו Read כולו.

l. 6. [מומת] Read מימת, dialectic for מאימתי. The printed text has more correctly אימתי.

l. 9. [וקיים] Delete the ו.

10 וההפך במקומו וקאלו איצא נדר שהותר מקצתו הותר כלו ואי רגל אכתאר
פסך נדר אבנתה ונדרת מרתה וטן אנהא אבנתה ופסכה פאלנדר תאבת
בל יגב אן ירגע פי פסך נדר מרתה אן אכתאר דלך וכדלך אלקול אן אכתאר
פסך נדר מרתה וכאנת אבנתה אלנאדרה לקו' נדרה אשתו סבור שנדר בה
בתו נדרה בתו סבור שנדרה אשתו נדרה בנויר סבר סבור שנדרה בקרבן
15 נדרה בקרבן כסבור שנדרה בנויר נדרה מן התאנים סבור מן הענבים סבור
שנדרה מן התאנים הרי זה יחזור ויפר: פאן סמע פי יום סבת באנהא קד
נדרת פלה פסך נדרהא באלפאט ינירהא עמא ילפט בהא פי אבטאל
דלך פי זמאן אלחול מתלא יקול להא כלי מן הרא אלרי קד נדרת אלא תאכלין
מנה ודלך בשרט אן יפסך נדרהא פי נפסה פאן דלך יקום מקאם קו' אני
20 קד פכנת נדרך לקו' מפירין נדרים בשבת לא יאמר אדם לאשתו בשבת
מופר ליכי מבוטל ליכי בדרך שאומר לה בחול אילא אומר לה טלי אכלי
טלי שתי הרי זה נדר בטל ובטל מאילין אמ' ה' יוחנן וצריך שיבטל בלבן
ונעל רבות' פרקא פימא בין אלאלפאט אלתי בהא יפסך אלזוג אימאן מרתה
ונדורהא ובין אלאלפאט אלתי בהא יפסכה אלחכם פקאל אמ' ה' יוחנן חכם
25 שאמר בלשון בעל ובעל שאמר בלשון חכם ולא כלום בעל אומ' מופר ליכי

l. 10. Mishnah Nedarim 9, 6. Babli 66 a has מכללו instead of מקצתו.
But our reading is quoted 25 b.

l. 13. [שנדרה בה] Nedarim 86 b. Read ינדרה בה.

l. 14. [סבר] This word is to be deleted.

l. 15. [הענבים] Insert נדרה מן הענבים which fell out after this word
through homoioteleuton.

l. 18. [תאכלין] Indicative after אל!

l. 20. *Ibid.*, 77 b. The first three words are quoted on p. 77 a, and
should have been repeated here, for it is on them that the following
decision turns. See marginal note in Wilna edition. There are some other
slight variants.

l. 22. [מאילין] Read בלבו. [מאילין] Read בלבו.

l. 24. *Loc. cit.* We have here an essentially different reading, and
judging from the trend of the discussion, it appears that our manuscript has
preserved the more genuine reading. The last sentence is found in *Sifre*
Numbers, section 153 (p. 55 b).

l. 25. [חכם] Insert לא אמר after this word.

מבוטל ליכי וחכמ' אומ' שרי ליכי אבל איפכה לא בעל מפר ואין חכם מפר
חכם מתיר ואין בעל מתיר* פאמא אלארמלה ואלמטלקה פנמיע

25 a

מא עקרתה עלי נפסהא פתאבת עליהא כק' ונדר אלמנה וגרושה ונ' פאן כאנו
רואת בעול קד דכלו בהן פיגב עליהמא אלאיפא בנמיע נדורהמא ועקודהמא
לקו' ונדר אלמנה וגרושה מן הנשואין ולא מן הארושין* פאן נדרת ארמלה
או מטלקה מן הנשואין נדרא יתנאוו זמאנה ל' יומא פאתפק תווינהא
5 ופאפחה קבל דלך פליס ללווג פסך נדרהא לקו' ונדר אלמנה וגרושה יקו'
עליה כאזעזר אמרה הריני נזירה לאחר שלשים יום אף על פי שנשאת בתוך
שלשים יום אינו יכול להפר: פאן קאלת לבעלהא קד נדרת אן אפעל כדי וכדי מ'
בעד ל' יומא מן יומנא הדא פפצה בעלהא תם תארמלת או טלקת פאלפסך תאבת
לק' נדרה והיא ברשות הבעל והפר לה ואמרה הריני נזירה לאחר שלשים יום אף על
10 פי שנתארמלה או שנתגרשה בתוך שלשים יום הרי זה מופר נדרה בו ביום ונתגרש[ה]
בו ביום אינו יכול להפר זה הכלל כל שיעצת לרשות עצמה שעה אחת אינו יכול
להפר פאן כאן ללארמלה יבם ואחד פלה אן יפסך נדורהא ועקודהא לא אדא כאן לה[א]
שני יבמין לקו' שומרת יבם בין יבם אחד ובין שני יבמין ר' אליעזר אומ' יפר ור'
יהושע אומ' לאחד ולא לשנים ר' עקיבא אומ' לא לאחד ולא לשנים ואלהלכה פי
15 דלך בר' יהושע* תם שרחנא אלקסם אלז' אלהאוי עלי אליז' אלשריעה אלמצדר
דכרהא*

אלפצל אלה מן אלשראיע פי ננאסאת מבצועה תאליף ראם אלכל חפין בן

1. 26. [וחכמ' Read וחכם.

Fol. 25 a, l. 1. Num. 30. 10.

1 3. *Sifre Numbers*, section 154 (p. 57 b). The second half of the sentence is a *résumé*.

1. 5 Nedarim 88 b.

1. 7 מ' The dot may indicate that the letter is to be deleted, or that it is an abbreviation of מן. The latter is rather unusual.

1. 9. *Ibid.*, 89 a. Some phraseological variants.

1. 13. *Ibid.*, 74 a.

1. 14. [ואלהלכה] See Maimonides's Code, *Hilkot Nedarim*, 1, 23.

יְצִלֵּחַ מִנְהָא פִּי אֲלַחְמֵל וְאֵלְדֵּנוּ בִּנְתָא חִיוָּאנָא מִכְצוּעָה וְגִיר דְּלָךְ יַחֲוִי ט' שְׂרָאִיעַ
 אִוְאִיר תְּלִים פִּי כָל זִמָּאן וּמִכָּאן" אֲלִשְׂרִיעָה אֲלֹאֲוִי מִנָּה"
 20 תּוֹנֵב עָלֵי מִן דִּנָּא בִּנְתָא אֲלִבְהָאִים וְאִלּוּחֻשׁ אֲלִנְסָה אֲלִי זִמָּאן אֲלִגְרֹוב אֲלֵאכְבֵּר
 פֶּאן חֲמֻלָּהּ פִּינָס וְתִיַּאבָּה וְאֵן יִכּוּנָא עָלֵי חָאֵל נִנְאִסְתַּחֲמָא בְּעַד אֲלֵאֲרַחְתָּאן
 וְאֲלִנְסֵל אֲלִי זִמָּאן אֲלִגְרֹוב אֲלֵאכְבֵּר כִּק' וְלֵאֲלֵה תִטְמָא כָּל הַנוּעַ וְג' וְכָל הַנוּשָׂא
 מִנְבִּלְתָּם וְג' לְכָל הַבְּהֵמָה וְג' וְכָל הוֹלֵךְ עַל כַּפָּיו וְג' וְהַנוּשָׂא אֶת נִבְל' וְג' אִמָּא
 קוֹל' כָּל הַנוּעַ וְג' פְּעָלִי טֵאֲהֵרָה אֲדִי יִקְצֵד בַּהּ נִנְאִסָּה אֲלִנְסָם אֲלִדְרָאנִי בְּהָא לֹא
 25 מָא עֲלֵאָה מִן תּוֹב וְלָקוּ אֵין הַנוּעַ מִטְמָא בְּגִידִים" וְאֲלִדְרָאנִי בְּזוּ מִן

25 b

דְּלָךְ וּבִנְטִיעָה סוּא פִּי אֲלִנְסָסָה וְאֵלְנוּ מִן הָדָה אֲלִנְתָּה פְּעָלִי ז' אֲנַחָא אֲלֹאֲוִל
 מִנְהָא אֲלֵעֲזָאִם וְאֲלֵעֲרוֹק וְאֲלֵקֶרֶן וְאֲלֵאֲטִלָּאָף וְגִירָהּ פֶּאנְהָא מוֹתִי כֹאנְתָּ מִגִּרָּה
 לֹא לָחֵם עֲלִיָּהּ פֶּאֲלִדְרָאנִי מִנְהָא לֹא יִנָּס בַּחֲכָם נִבְלָה וְכִדְלָךְ אֲלִגְלֹוד אֲלֵא מָא כֹּאן
 מִנְהָא גִלְד כְּנִזִּיר וְגִלְד סָנָם רִבִּין מִן גִּמֵּל וְגִלְד רֹאס עֹגֵל רִבִּין וְגִלְד טֵלָף וְגִלְד
 5 סוּאָה וְגִלְד גִּנִּין וְגִלְד תַּחַת אֲלֵאֲלִיָּה פֶּאנְהָא תִנָּס כִּלְחֻמָּהּ פֶּאן דִּבְנֵת פִּלָּא
 תִנָּס פֶּאמָא גִלְד אֲלֵאֲנִסָּאן פֶּאנְהָא כֹּאס וּמִרְבּוֹג לָקוּ בְּבִהֵמָה הָעוֹר וְהָרוּטֵב

l. 20. [אֲלִנְסָה] As this word is undoubtedly an adjective qualifying
 מִנְהָא אֲלֵעֲזָאִם וְאֲלֵעֲרוֹק, it cannot be the object of תּוֹנֵב. We accordingly miss
 some such words as אֵן יִנָּס which should be supplied. [אֲלִגְרֹוב אֲלֵאכְבֵּר]
 Literally: *the larger sunset*. This adjective is to emphasize the fact that
 he is not to become clean until it gets utterly dark. Owing to the dual
 form of עֲרִיפִים, mediaeval Jewish writers divided the sunset into two parts.
 See Rashi and Ibn Ezra on Exod. 12. 6.

l. 21. [וְאֵן יִכּוּנָא] This is governed by תּוֹנֵב.

l. 22. Lev. 11. 24-8.

l. 24. [אֲדִי] This word is superfluous and should be deleted.

l. 25. *Sifra Shemini*, section 4, 7 (p. 51 b).

Fol. 25 b, l. 6. [כֹּאס] As this word stands it does not suit the context,
 whether we take it as *كاس* or *حاس*. We ought therefore to read כֹּאס, and
 regard it as an adjective of בָּאֵס *he was hairy*. It would thus be the
 opposite of מַדְבּוּעַ. In order to make the sentence complete we would
 have to insert some such word as תִנָּס before כֹּאס. It is also possible that

והקופה והאליל והעצמות והגידים וקרנים והטלפים מצטרפין לטמא טמאת
 אוכלין אבל לא טמאת נבלות ואיצא ואלו שעורותיהן כבשרן עור האדם ועור
 החזיר של ישוב ר' יוסי אומ' אף עור חזיר של בר עור הטא'ית של גמל הרך עור
 הפרסות ועור בית הבשת ועור השליל עור שתחת האליה וכלן שעבדן או שהלך
 10 בהן כדי עברה טהורים חוץ מן עור האדם* אלגזו אלב אללחם אלדי אקל מקדארה
 זיתונה מעתדלה פמא פוקהא פאנה ינגם אלדאני אליה לקו' כזית מן הנבלה:
 אלגזו אלג' עזו מקדארה אקל מן זיתונה פמא פוקהא קד נמע לחמא
 ועטמא וערקא מחצל פאנה ינגם אלדאני אליה לקו' אבר כבריתו בשר גידים
 15 ועצמות ואיצא האברים אין להם שיעור אפילו פחות מכזית מן המת ופחות
 כזית מן הנבלה ופחות מכעדשה מן השרין מיטמאין בטמאתן ונמיע אל
 אלגתת ואלגזו מנהא וכל ואחד מן אעצאהא אלמנגסה פלא תנגם אלדאני מנהא
 מתי כאן גמיעהא יאבס בל מתי כאנת עלי חאל רטובתהא אן ימכן אן תתרטב

כאם is merely a corruption of נגם, and the י of the following word has the force of *even*. In my translation I adopted the first interpretation. *Teharot* 1, 4. [בבהמה וכו']

l. 8. *Hullin* 122 a.

l. 9. [ר' יוסי] The talmudic text in this place has יהודה. But in other places where this Mishnah is quoted, this opinion is ascribed to ר' יוסי. ועור הראש של ענל הרך. After this word the printed text has הרך. That our manuscript offers no genuine variant is evident from the Arabic *résumé*, where this point is mentioned. These words simply fell out through homoioteleuton.

l. 10. [האליה] A number of words follow here in the printed text. But they probably were omitted by the author intentionally, as they deal with creeping things, a subject to which IĪefeš devoted a special precept. See below, note on fol. 26 b, l. 12.

l. 12. [מעתדלה] Eighth conjugation of عدل = of middling size. *Teharot* 3, 4; 5, 1. [כזית וכו']

l. 13. [פמא פוקהא] A rather awkward addition. But perhaps the awkwardness was not felt on account of the frequent use of this phrase.

l. 14. *Sifra Shemini*, section 4, 6 (p. 51 b). מן התי is omitted here after אבר.

l. 15. *Ohalot* 1, 7.

l. 16. [כזית] Read מכזית.

l. 18. [אן ימכן] Read . . . או.

במא פאתר פתרגע אלי אלחאל אלאול פי זמאן כד סאעה לקו' דם הנדה ובשר
 20 המת מטמאין לחים ומטמאין יבשים אבל חזוב והנועי והרוק והשרין—
 והנבלה ושכבת זרע מטמאין לחין ואין מטמאין יבשים ואם יכולין לשרות
 ולחזור לכמות שהיו מטמאין לחין ומטמאין יבשים וכמה היא שריתן
 בפושרים מעת לעת ואיצא רבן שמעון בן גמליאל אומ' פושרין צריכין שיהיו
 פושרין מעת לעת' וקו' וכל הנושא מנבל' וג' יקצני ננאסה אלהאמל להדה
 25 אלגתת ומא עלאה מן תוב סוא כאן מבאשרא לחמלהא או בתוסט ואסטה
 וקאל רבו' איצא מלמד שהנושא מטמא בגדים ואלגתת אלמנסה אלההליה

26 a

מנהא ואלכריה ואן כאן פיהא בעין עלאמאת אלטאהרה מנהא ואלנגסה
 פמתסאוויה פי חכם אלנגאסה לקו' אלכתאב לכל הבהמה וג' וקו' וכל הולך על
 כפיו יחוי אלהיואנאת אלסאלכאת עלי אכפהא מנהא אלקרד ואלקנפד
 ואבן ערס וענאק אלארין וכלב אלמא לקו' כל הולך על כפיו זה הקוף כל הולך
 5 להביא את הקופד וחלדת הסנאין ואדני היטרה וכלב המים' וינדרג פי
 טי קולה בכל החיה אלפיל איצא לקו' בכל החיה להביא את הפיל וישיר בקו'
 וכל הנוגע בהם יטמא אלי אלנאס ואלה ואניה לקו' כל הנוגע בהם יטמא
 בין אדם ובין כלים' ומתי כאנת הדה אלנבאיל עלי אלה או אניה ותחת הדה
 אלאואני ואלאלה אואני אבר או אלה או מאכול ומשרוב פלן ינגס לדלך
 10 כינאה אלא אלדאני מן אלנבלה לקו' להם הם מטמאין אינן מטמאין לא

l. 19. Niddah 54 b.

l. 22. [שהיו] This is a superior reading to שהן of the printed text.

l. 23. *Ibid.*, 56 a. The first פושרים is omitted in the printed text.l. 25. [מבאשרא] *Direct, nothing intervening.*l. 26. [אלההליה] *ألهة* = *Sifra, ibid.*, 4, 8 (p. 51 c). [מלמד וכו']
domestic.

Fol. 26 a, l. 2. Leviticus 11, 26.

l. 4. *Sifra Shemini*, chap. 6, 5 (p. 51 d).l. 5. [המים] The printed edition has *מים*. See, however, *Kelim* 17, 13.l. 6. *Sifra, ibid.*l. 10. *Ibid.*, 6, 10 (p. 52 a). Read *לכם* instead of *להם*.

אוכלים ולא משקים ולא כלים במושא ואלמוותל אלתי וזעוהא דלדך קרמנא
 פתטול פנקצרהא לטולחא: וקו' וטמא עד הערב ילזמה דלך לילא ידנו בשי
 מן אלאקראס לא גיראה מן אלאמור אלעאמיה לקו' הא כאיצוד טהור לחולין מבעור
 יום ולתרומה משתחשך ונבאיל אלחיואן אלסאבה אלשביה בנבאיל אלצחראניה
 15 ואלחצריה אלמנסה פלא תננס אלא נתח אלחיואן מנהא אלמסמא בלב
 אלמא לקו' כל שבים טהור חוין מוכלב המים מפני שהוא פורה מן היבוש
 אלשריעה אלב מנה¹ תאמר כתי דני בנתת אישכאין
 חיואנא ח' אלתי הי אלבלד ואלפאר ואלצב ואצנאפה ואלורל ואלחרדון ואל
 עטאיה ואלחרבא ואלסם אברין אן יכון אלדאני דלדך נסא אלי זמאן אלגרוי
 20 אלאבבר כק' וזה לכם הטמא הש' וג' והאנקה והבוז וג' אלה הטמאים לכם וג'
 למא אכרג קו' שרין מכרג ננס עאר פדכר מנהא אנואעא אלתי הי אלבלד [וג']
 וכל ואחד מן אנוא לחום הדא אלאשכאין מתי כאן מנפצלא פיננס מא
 כאן יננס נמלתה ואלחד פי דלך פמא כאן אקל מקדארה עדסה פמא מו
 פוקהא לקו' כעדישה מן השרין פמא כאן דון הדא אלמקראר וכאן מנתמעא
 25 מן לחם וערק ועטם פיננס בנמיע אלנתה סוא פי דלך אנפצל מן אלשרין

1. 11. ואלמוותל. مَثَلٌ, plural of مَثَالٌ, *example, description*. The orthography is rather exceptional. Comp. סיואן, fol. 1 b, l. 6.

1. 13. *Ibid.*, 8, 9 (p. 53 c). See Yebamot 74 b.

1. 16. [בל וכו'] Kelim 17, 13. [פורה מן היבוש] The printed edition has בורח ליבשה.

1. 17. [אשכאין] Read אִשְׂרָאִין. This is the broken plural of the Hebrew word שרין which does not occur in general Arabic. But as אִשְׂכָּאִין can only mean *bodies, persons*, the reading אִשְׂרָאִין is the only one possible here. This is how שרצים is rendered in Sa'adya's translation. The singular שרש occurs in Abu'l-Fath's *Samaritan Annals* (p. 82, l. 6). See also Dozy.

1. 19. [ואלסם] Read ואלסאם as in Sa'adya's translation. See also below, fol. 26 b, l. 11.

1. 20. [אלאבבר] See above, note on fol. 25 a, l. 20. [וזה וכו'] Lev.

11. 29-31.

1. 23. [כו] To be deleted.

1. 24. Hagigah 11 a.

26 b

ואלשרין חי או מיתא לקו' יכול הבשר הפורש מן החי מטמא תלמו לומ' במותם מה מיתה שאין להם חילופים אף אבר מן החי שאין לה חילופים מה השרין בשר גידים ועצמות אף אבר מן החי כבריתו בשר גידים ועצמות וקאלו אברים שאין להם שיעור אפילו פחות מכזית מן המת פחות 5
מכזית מן הנבלה ופחות מכעדשה מן השרין מטמאין בטמאתן.
ואמא דמה פקאלו פי שרחה וזה לבם הטמא שיטמא כבשרו.
וסנדבר צנוף אלדמא פי שריעה וכל דם לא תא פי אלפצל אלתאלי להדא אלפצל אן שא אללה' פאמא אלעטאם מנהא אלמגדרה מן אללחם וכדלק אטפארהא ושעורהא פלא ינגם לקו' מנבלתם לא מן העצמות ולא מן 10
השנים ולא מן הצפרנים ולא מן השער שלהן' ואלגלד מן אלורל ואלחרדון ואלעטאיה ואלחרבא ואלסאם אברין פתנגם מתי כאנת ניר מדבוגה לא מדבוגה כמא תנגם נתתהא לקול אלמשנה ואילו שעורותיהן כבשרן עור האנקה והבב והלטאה והחומט ו' יהודה או' הלטאה כחלדה וכלם שעברן או שהולך בהן כדי עיבודה טהורין חוין מעור האדם ו' יוחנן בן נורי או' שמנה שרצים יש להן עורות' ואלתלמוד פקאל תנו רבנן הטמאים לרבות 15
עורותיהן כבשרן יכול בולם תלמו לומ' אלה וכי בתי אלה על כולהי כח א' ו' למינהו הפסיק העינין וניתני התנשמת א' ו' שמואל בר ו' יצחק רב תיני

Fol. 26 b, l. 1. *Sifra Shemini*, section 6, 3 (p. 52 d). The names of the Tannaim, as well as the opinion of R. 'Akiba, are omitted here. See *Hullin* 128 b.

l. 4. *Ohalot* 1, 7.

l. 6. *Ibid.*, 5, 2 (p. 52 a). The wording there is more explicit: להביא את דמו שיטמא כבשרו.

l. 9. *Ibid.*, chap. 10, 2 (p. 55 b). There it is בנבלתם which is erroneous, as it refers to Lev. 11. 35.

l. 12. *Hullin* 122 a. The part relating to animals is omitted here. See above, note on fol. 25 b, l. 10.

l. 15. *Ibid.*, 122 b.

l. 16. [וכי בתי] These two words are corrupt. Read והא.

l. 17. [וניתני] The printed text has וליחשוב. After this word the printed text has תנא הוא ו'.

התנשמת ואליאבסה מן נתת הרה אלאשכאין פלא תננס פאמא מתי וקעת
 פי מא פאתר כד סאעה פעארת אלי חאל רטובתהא פתננס לדלך דליל דלך
 20 פקר דברנאה פי אלשריעה אלתי קבל הרה פי טי דברנא לך נבלת בהמה וחיה
 פאן יבס בעין אנזאיהא מע אתצאלה בנירה ובעצ' למ יבס וכדלך אן
 אחתרק בעין אנזאיהא ואלבעין למ יחתרק פאלדי למ יבס ולם יחתרק יננס
 לא מא יבס ואחתרק מן תלך אלנמלה לקו' אמ' ר' שמעון בן לקיש שרין
 שיבש ושלדו קימת טמא והא אינן תנן מטמאין לחין ואין מטמאין
 25 יבשים אמ' ר' זורא לא קשיא הא בסלן הא במקצתן ואיצא אמ' ר' שמעון בן לקיש
 שרין שנשרף ושלדו קיימת טמא מוטיבי מצאו שרוף על נבי זיתים וכן

27 a

המטלית המהוהה טהורה שכל הטמאות בשעת מציאתן אמ' ר' זורא לא
 קשיא הא בכלן הא במקצתן ואן כאן אלפאר אלמנפעל מן אלתראב קר
 אנפעל בעצ' לחם ונלד ואלבאקי מנה יעלוה גשא מתצל בגלד אללחם
 וכאנת אלתרכה קר אנבתת פיה פאנה יננס מן דנא בה לקו' עכבר שחציו
 5 בשר וחציו אדמה הנוגע בבשר טמא ובאדמה טהור אמ' ר' יהושע בן לוי
 והוא שהשריין על פני כלו איכא דמתני לה אסופה ר' יהודה אומ' אף הנוגע
 באדמה שכנגד הבשר טמא ואמ' ר' יהושע בן לוי והוא שהשריין על פני כלו
 וקו' על הארץ יריר בה אלתיואנאת אלכאניה עלי אלארין לא אלתי מנהא
 פי אלמא לקו' אף אביא עכבר שבים ששמו עכבר תלמ' לומ' על הארץ
 10 להוציא את שבים וקאלו תנו רבנן כל שברא הקב"ה ביבשה ברא כנגדו בים

1. 18. Read אלא'יראין [אלאשכאין]. See above, note on fol. 26 a, l. 17.

1. 21. Read ואלבעין [ובעצ']. Read אתצאלה [אתצאלה].
 Read [לם יבס] למ יבס.

1. 23. Niddah 56 a.

1. 25. Read [בסלן] בכולן. The copyist mistook כו for ד.

Ibid. [אמ' ר' שמעון וכו']

Fol. 27 a, l. 5. IJullin 126 b.

1. 9. *Sifra Shemini*, section 5, 4 (p. 52 b). See also IJullin 126 b.

1. 10. IJullin 127 a. See also Tosefta Kil'ayim 5, 10. The wording is slightly different.

חיון החלדה וקו' והצב למינהו פאצנאף אלצב מן דלך אלסקנקור ואלסקאט
ואלסמנדל לקו' הצב למינהו לרבות מנין של צב כנון ערוד וכן הנפלים
וסמנדרא וקו' כל הנוגע בהם יט' אונב עלי אלדאני בהא והי אמזא ננאסה
דאחה לא מא עלאה מן טוב וקאל רבו' איצא אין השרין מטמא במשא'
אלשריעה אלנ מנה' תאמר אי אניה ואלה וקע עליהא 15
אהר הרה אלאשבאין אלה בעד מוההא אן תנגס לדלך ואן תנגס פי אלמא
ותבקא עלי חאל ננאסההא אלי זמאן אלגרב אלכבר חס תטהר כק'
וכל אשר יפל עליו מוהם במתם יטמא מכל כלי עין ונ' בעד מא שבעת
הרה אלשריעה כלי עין ובגד ועור ושק עאדת פעמת סאיר אלאואני
אלמסתעמלאת פקאלת כל כלי אשר יעשה מלאכה בהם לאן מעני 20
קולה אשר יעשה מלאכה בהם יקחצי כלים תאמה דואת חרוד
באמלה לא תנקין פי דואתהא ובמאל צנעתה תצלה למא הי לה
כלים לקו' כלי עין מאימתי מקבלין טומאה המטה ועיסה משישופם
בעור הדג נמר שלא לשוף טמאים ר' יהודה אומ' המטה משיסרג
בה שלשה בתים הסלין של עין משיחסום ויקוב ושל תמרה אף על פי שלא 25
קינב מבפנים טמא שכן מקימין בלכלה משיחסום ויקנב ויגמר

1. 11. Insert מן after this word. [אלסקנקור] For the exact meaning of سَمَكَةٌ see *Ibn Baṭṭūṭah's Travels*, vol. III, p. 103, l. 8. Comp. also *Der Islam*, IV, p. 436.

1. 12. [הצב וכו'] *Sifra Shemini*, section 5, 7 (p. 52 b). See also I. Jullin 127 a. Read מינין ערוד. The *Sifra* has חברבר while the Talmud agrees with our manuscript as regards the name of the creeping thing.

1. 13. [וסמנדרא] The usual texts have סלמנדרא which is in accordance with Greek σαλαμάνδρα. But as the same word is in Arabic سَمَنْدَل or سَمَنْدَر, the spelling of our manuscript need not necessarily be regarded as a copyist's error.

1. 14. *Ibid.*, 5, 2. See *Kelim* 1, 1. The wording is slightly different.

1. 16. [אלאשראין] Read אלאשבאין. See note on fol. 26 a, l. 17.

1. 17. [אלאכבר] See above, note on fol. 25 a, l. 20.

1. 18. *Lev.* 11. 32.

1. 23. *Kelim* 16, 1-4.

1. 24. [ר' יהודה] The Mishnah has מאיר.

1. 25. [ויקנב] Read ויקנב.

27 b

את התלויה בית הלנין ובית הבוסות אף על פי שלא קינב מבפנים
 טמא שכן מקימין הקנונים קטנים והקלתות משיחוסם ויקנב
 הקנונים הגדולים והסינין הגדולים משיעשה שני דודים לרחב שלהן ים
 נפה וכברה ובף של מאזנים משיעשה דוד אחד לרחב שלהן הקופה
 5 משיעשה שתי צפירות לרחב שלה והערק משיעשה בו צפירה אחת
 כלי עור מאימתי מקבלין טומאה התרמל משיחוסם ויקנב ויעשה את
 קיחותיו ור' יהודה אומ' משיעשה את אוניו סקורטיה משיחוסם ויקנב
 ויעשה את ציצותיה ור' יהודה אומ' משיעשה את טבעותיה קוטבליה
 משיחוסם ויקנב ור' יהודה אומ' משיעשה את קיחותיה הכר והכסת
 10 של עור משיחוסם ויקנב ור' יהודה אומ' משיחוסם ויט'ר בו פחות ^{פחות}
 מחמישה טפחים וקאלו איצא כל עין מאימתי מקבל טמאה הסנדל
 משיקמע והמנעל משינוב על האמום ואם עתיד לכרכם עד שיכרכם
 ולשרטט עד שישרטט אסקרטיא עד שיטפטף וקיטבליא משירשרטט
 עור העריסה שהוא עתיד לעשות לו טבור טהור עד שיעשה לו טבור
 15 תפסיר משיחוסם ויקנב מנר יסתכמל עמל שפתיה ויקטע מא יתבקא
 מן אלקצבאן אלנאתיה מנה כלכלה בנינה בית הלנין נלאף רטליאת'

Fol. 27 b, l. 2. Read הקטנים [קטנים].

l. 3. Read דודים [דודים].

l. 4. Read דור [דור].

l. 8. Read קיטבליא [קיטבליא].

l. 10. Read משיחוסם . . . בו [משיחוסם] The mishnic text has plural suffixes which are more correct.

l. 11. Read כלי עור [כל עין וכו'] Tosefta Kelim baba meši'a 6, 1. 2. There are a few insignificant variants.

l. 12. Some texts have לכרכב to make a rim. The reading of our manuscript is superior, and is satisfactorily explained by Iḥefeṣ in the following glossary.

l. 15. [תפסיר] Maimonides in his commentary on this Mishnah (ed. Derenbourg) mostly amplifies the brief explanations of Iḥefeṣ.

l. 16. [בנינה] This word is not recorded in the lexica. It doubtless denotes a kind of a basket. ^{הַבֵּנִינָה} = *hyoscyamus*, or *herbane*; ^{הַבֵּנִינָה} = *vinasse*. See Dozy.

ואשבאההא הקנונים אטבאק והסיגין קפאף כבאר דורין סאפין צפאיר
 צפירות דורין הערק נפיה' התרמל שביה בשקבאן קיחותיו ערי
 קיטבליא נטע סקורטיא ספרה משיגוב על האמום מנד ינשף עלי
 20 אלקאלב לברכם מנד יזעפר ישרטט יכטט וקאלו קולא אברא מנמועא
 כלי עין אין מקבלין טמאה עד שתנמר מלאכתן כלי עצם מאימתי מקבלין
 טמאה משתנמר מלאכתן היו מחוסרין כסויין טמאים כלי חרש מאימתי
 מקבלין טמאה משיצרפנו בכבשן והוא נמר מלאכתן* ואלכלים
 נועין אחרהמא לה גו יחוי הוא ואלאכר דא סטח לא יחוי הוא ואלתי מנהא
 25 לה גו פמנה מא יקבל אלנאסה ומנה מא לא יקבל אלנאסה* ואלתי לא
 גו להא פמנהא קאבלה ננאסה ומנהא ליסת קאבלה ננאסה ומנהא קאבלה

28 a

ננאסה כאן להא גו או למ יכן להא דלך* פאלתי מנהא לה גו ולא יגנס
 פמנהא כלי הקרש נמעא כוי פי דלך באן להא גו או למ יכן להא* ומנהא
 אואני ממלוה מא קר אעדת לה לא ימכן חמלהא והי מלא מן דלך
 אלכבאר מן אלכואין ואלתואבית אלעטימה ופנטאם אלספינה אלמועא

1. 17. דורין Read [סאפין] *سَافٍ* = a thin lock, or tress.
 דורין *صَفَائِر*, plural *صَفِيرَة*, = a lock, or tress.

1. 18. דורין Read דורין and צפירות are to some extent synonymous, it is quite unusual for Hefeş to give a Hebrew equivalent. Furthermore, דורין in the preceding line seems to have two Arabic equivalents, and this again is out of harmony with the author's method. It therefore seems best to delete דורין in this line and to arrange the words as follows: דורין סאפין צפירות צפאיר. My translation is in accordance with this arrangement. *سَقْبَان* [בשקבאן] is a kind of sack for carrying grain. See Dozy. *عُرَى*, singular *عُرَّة*, = handles, or loopholes.

1. 21. Hefeş explicitly says that the following passage occurs in one place; but I was unable to find it. It may have formed part of a halakic Midrash which is no longer extant. The three component parts of this passage, however, are found in three different places: Tosefta Kelim baba meš'i'a 2, 18; 6, 3; Mishnah Kelim 4, 4.

Fol. 28 a, l. 2. [באן] Read כאן.

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F f

5 פיה מא ומא יגרי הרא אלמגרי ומנהא מא ימכן חמלה והו מלא ודלך מא
 אעדוה אלצביאן לילעבו בה מנהא קשר אללפת ואלאתרנ ואלקרע ומא
 אשבההא' פאמא מא כאן ממא נחי דלך דא תאבת פי זמאן טויל פיננס
 לקו' כל הכלים שיש להם אחורים ותוך כנון הברים והכסות והשקים
 והמרציפין וג' כלי הקדש אין להם אחורים ותוך ואין להם בית הצביעה
 10 וקאלו שירה ותבה ומנדל וכוארת הקש ובורת הקנים ובור ספינה אל
 אלכסנדרית אף על פי שיש להם שולים שהן מחזיקין ארבעים סאה בלא
 שהן כורים ביבש הרי אילו טהורים ושאר כל הכלים בין מקבלין ובין
 שאינן מקבלין מקבלין טמאה דברי ר' מאיר ר' יהודה אומ' דרדור ענלה
 וקסמית מלכים ועריבת העבדן ובור ספינה קטנה וארון אף על פי מקבלין
 15 טמאים שאינן עשויים ליטלטל אילא במה שבהן ושאר כל הכלים מקבלין
 טמאין ושאינן מקבלין טהורין אין דברי ר' מאיר לדברי ר' יהודה אילא
 ערבה של בעל הבית וקאלו העשה כלים מדבר שהוא מ' של מעמד טמא
 מדבר שאינו של מעמד טהור הלפת ואחרונ' ודלעת יבשה שחקקום
 תינוקות למור בהם את העפר או שהתקינום לכף מאזנים טהורים הרמון
 20 והאלון והאנוזים שחקקום תינוקות למור בהן את העפר או שהתקינום
 לכף מאזנים טמאים ומנהא קאעדוה מא תחת מלבן כשכל מכציון
 או כרסי ממא הו מסתעד לוצע אלרגלין לקו' חמור שתחת המלבן
 והספסלין שתחת הרגלים אף על פי שחקקום ומקבלין טהורים ואין

1. 8. Kelim 25, 1.

1. 9. *Ibid.*, 25, 9. [כלי הקדש]

1. 10. *Ibid.*, 15, 1. There are some variants besides one or two scribal errors.

1. 16. [טמאים . . . טהורין] These two words have changed positions by mistake. The trend of the argument proves that the reading of the Mishnah is the only one possible, and that our manuscript offers no genuine variant. [אין] Insert בין after this word.

1. 17. [העשה וכו'] Tosefta Kelim baba meši'a 7. 7. כִּן This letter is to be deleted.

1. 21. [כשכל] Read בשכל.

1. 22. *Ibid.*, 8, 3.

1. 23. [הרגלים] After this word the printed edition has: טהורים כפותין. These words probably were omitted in this manuscript through homoioteleuton.

בהן משום קבול וקאלו כל המחובר לקרקע הרי הוא בקרקע^ה ומנהא
25 מא יעמל מן גלד חיואן כאין פי אלמא אלהם אלא אן יציף אליה גלד או

28 b

גירה מן אלתי חקבל ננאסה אמא בלואק או בכרו או בגירחמא
פאמא אלמענועה מן גלד חיואן מסמי כלב אלמא פאנה יננס ואן לם
ינצף אליה גירה לקו' כל שבים טהור חוין מכלב המים מפני שהוא
פורה ביבוש דברי ר' עקיבא העושה כלים מן הגדל בים וחבר להם
5 מן הגדל בארץ ואפילו חוט ואפילו משיחה דבר שמקבל טמאה
טמא ולבד שיחברנו לו בדרך חבורו לטמאה^ה ומנהא מא יעמל
מן בתי בקר ומנחותא מן חנארה מנהא קואעד ואנראן ומה שבה
הדה לקו' שבעת ימים קודם לשריפת הפרה מפרישין את הכרין השורף
את הפרה מביתו ללשכה שעל פני הבירה צפונה מזרחת ולשכת
10 בית אבן היתה נקראת ולמה נקרא שמה לשכת בית אבן שכל מעשיה
בכלי גללים ובכלי אבנים ובכלי אדמה מאי טעמא וג' תקינו ליה רבנן
כלי גללים וכלי אבנים וכלי אדמה דלא מקבלין טמאה כי היכי דלא
לילולו בה^י ומנהא טבק מן כשב לה חאפה ונטא קעבה מערה ללבויתא^ה
מעמולה מן דהב ופצה ונחאס וחריד וגיר דלך מן אלמסבוכא לקו'
15 הטבלה שיש לה ליוביו בכלי עץ טהורה ואיצא כסוי טני של מחבת

l. 24. Baba batra 65 b.

Fol. 28 b, l. 3. Kelim 17, 13. Some variants. See above, note on fol. 26 a, l. 16.

l. 6. [ובלבד וכו'] This clause is not found in the mishnic text. See, however, *Sifra Šeminī*, section 6, 10 (p. 53 a).

l. 7. [כתי חֲטִי] = *dung*.

l. 8. [שבעת וכו'] Yoma 2 a. See Parah 3, 1. Read הבהן.

l. 13. [ללבויתא] בְּיוֹתָא *things that remain overnight, and become stale*, The י of this word look like י. But there can be no doubt about the reading.

l. 15. [הטבלה] As Ḥefeṣ treats of the class of vessels which have a receptacle and are not subject to defilement, the reading of our manuscript

של בעלי בתים רבן גמליאל מטמא וחכמי מטהרין בלהבוע ומנהא
 אלמתכרה מן עטאם אלטאיר פאן אציף אליהא מא יקבל אלגנאסה
 פתקבל לרלך לקו' העישה כלים מעעמיות העופות טהורים
 ואיצא חיבר להם מן הגדל בארץ אפילו חוט אפילו משיחה דבר
 20 שהוא מקבל טמאה טמא ומנהא אלתי תכון פי וקת אלעמל דריפה
 ותואל אדא אנקצא אלעמל ורלך כאלה ינשא בהא אלעון ואלכטאם ואל
 מנכל אלרי יסתר מן אלנחל ואשבאההא פלא תקבל ננאסה פאמא אן כאנת
 אלאניה מערה לאניה אכרי לא מפארהא להא פתננס מן דלך גטא תכת
 וקמטר וקבה וצרף מכאחל ואשבאההא לקו' המקלוט של בקר והחזוסם
 25 שלו והמדף של דבורים והמנפה הרי אלו טהורים ככוי קפסה טמא כיסוי
 קמטרא טהור ככוי תבה כסוי טני והמנכש של חרש וככא שתחת
 הַחֲבֵה

29 a

ד

החבה והקמרון שלה והאילונגין של כפר ובית הנגר ובית המנעול ובית המזוזה
 ותיק נבלים ותק כ[יגור]ות והאמום של גודלי מצנפות והמרכב של זמר ורביעין

is the only one which would suit the context. And yet the view it expresses is diametrically opposed to the decision of the Mishnah, not to speak of the fact that this passage is nowhere to be found. Kelim 27, 1 reads טבלה שאין לה לזביו בכלי עין טמאה. The only possible solution is that I[efes] had in mind the following passage: את טבלה העליונה שמרצים עליה את (Tosefta Kelim baba meši'a 10, 4). He omitted the qualifying clause. [כסוי וכו'] Kelim 12, 3. מוחבת Read מוחבת.

1. 18. Tosefta, *ibid.*, 7, 5.

1. 19. *Loc. cit.*

1. 21. [אלעון] This can scarcely be right. Below, fol. 29 a, l. 11 we have ללעין. Read, perhaps, עדן = *dung*. Maimonides explains מלקוט as אניה מן גלד ילחקט פיהא רוח אלבקר כי לא יפסד אלקמח: *a vessel in which the dung of the oxen is collected in order not to spoil the wheat.* This obviously supports my emendation.

1. 24. [וצרף] Instead of וטרף. See above, note on fol. 17 b, l. 10. והחיסום Read והחזוסם. המקלוט Kelim 16, 7. 8.

של אֵלִית וגנוגנ[ות הע]ני וסמכות המטה וכופים של תפילה ואמום של גודלי
מסאות הרי אילו טהורים זה הכלל אִמָּר יוסי כל המשמש משמישין של אדם
5 בשעת מלאכה ^ל ושלא בשעת מלאכה טמא וכל שאינו אִילָא בשעת
מלאכה טהור תוק מבחול ובית הכוחל ותיק מכתב ותרונתק והקיטבליא
וסקורטיא ובית החצים ובית הפרגושות הרי אילו טמאים תיק סמפוניא
בזמן שהוא נותנו מלמעלה טמא ומצדו טהור תיק חללים י יהודה מטהר
מפני שהוא נותנו מצדו וחפוי האלה בית הלגנין ובית הכסות אף על פי
10 ^{שהוא} שיש בו חמשה על חמשה טהור שאינו אִילָא חפוי ומישום חבורי
כלים טמא תפסיר מא שכל מן דלך המלקוט של בקר אלמגשי ללעין
והחסום שלו אלכטאם המדף של דבורים אלמנכל אלדי יסתר מן אלנחל
והמנפה אלמרוחה קפסה אלתכת אלמעובה קמטרא קמטר מכבש
תכת קמרון קבה האלגנין גלאף האמום אלקאלב של גודלי אלפתאלין ורביעין
15 חבאל סוד וגנוגנת משר תיק גמה תרנתיק פארשין והמרכוב של זמ[ר]
אלמרכוב מן אלה אלכשב ללמחאבי ואלמני הפרגושות אלקנאדיל

Fol. 29 a, l. 3. Read [גודלי] וטפוס [וכופים]. The printed text has
עושי means *weavers*, as Hefesh explains it later on. Comp. Arabic
جَدَل and Hebrew יְדָלִים.

1. 4. [מסאות] A number of variants are recorded : סאות, סוכות, סאות,
and סות. But מסאות is quoted nowhere. We ought, perhaps, to read
מסכות *woof*.

1. 6. [תוק] Read תיק. Many words are omitted here. The
printed text has ^{טיק} טבלה. But as סקורטיא and קיטבליא are usually
mentioned together, the reading of our manuscript is to be preferred.

1. 7. [הפרגושות] The mishnic text has ^{הפרגושות} הפגושות. Derenbourg has
הפגויות.

1. 9. [בית] From this word to the end of the quotation is not found in
the Mishnah which enumerates other kinds of vessels.

1. 11. [ללעין] Read, perhaps, ללעדן. See above, note on fol. 28 b, l. 21.

1. 13. [אלמעובה] This can scarcely be right. Read, perhaps, בה,
as ^{וַעֲנִי} וַעֲנִי = *he kept, retained*.

1. 14. [האלגנין] Read האלגנין.

1. 15. [משר] Read משר = ^{مَشْر} מֶשֶׁר a cloth from which a tent is made.

1. 16. [ללמחאבי] This may, perhaps, mean *recitations*. It seems to be
a plural of ^{مَحْكِي} مَحْكِي.

מכתב מכתב קיטבליא נטע סקורטיא ספרה האלה רבוס סמפוניא
 זמארה חלילין נאיין בית הלנינין אלקנאני פאמא אלתי להא נו ותקבל
 ננאסה פאלכלים אלתי לים ואחר מנהא משיבין פימא דכרנאה ונא
 20 יתבע מן דלך מנא לו נו ולא יקבל ננאסה מן דלך קמין ופרש ולחף
 ומכאר וסטיחה וקרבה וקדר וקצעה וצנרוק וכואנה ומסינה וניר דלך
 ממא יטול דכר אעיאנהא וחד אלמכאט מן אלתיאב אלקאבל
 ננאסה מנא כאן אקל מסאהתה ממא ילי אחד נאהא אללאבס נ
 קבצאט פמא פוקהא לקו' חלוק של קטן ר אליעזר אומ כל שהוא

29 b

וחבמו אומ עד שיהא כשיעור ונמדד כפול וקאלו העושה חלוק אם
 ואלננאסה
 יש בו שלשה על שלשה טמא ואם לאו טהור ואל ננאסה פתלום
 פי סאיר אלמעדרא אלמנעטפאט לכדמה אעצא אלברן ונירה מנהא
 נורב ודאן וקלום והו סראויל וכמראן לקו' ואילו נמדדין כפולין אנפיליא

l. 17. רבוס [רבוס] = *a mace, a pin*. Sa'adya translates שריה (Job 41, 18) by רבוס. That is the reason why I used that word in my Hebrew translation.

l. 18. נאיין [נאיין] = *a kind of flute*. See Dozy.

l. 20. לה [לה] Read לו.

l. 21. ומכאר [ומכאר] Is it, perhaps, *מִכּוּר* *a turban*? Or should we read מנאר, corresponding to מנורה?

l. 23. נאהא [נאהא] Read נהא.

l. 24. פמא פוקהא [פמא פוקהא] An unnecessary addition. See above, note on fol. 25 b, l. 13. חלוק וכו' Kelim 27, 5.

Fol. 29 b, l. 1. [העושה וכו'] Tosefta Kelim baba batra 5, 3. The printed edition has מן הלבד after this word.

l. 2. ואלננאסה [ואלננאסה] This word was smudged, and the copyist wrote it above the line. But not being satisfied, he wrote it once more on the margin.

l. 4. [וראן] Read וראן = *رَأْن* *a kind of legging, or boot*. [וראן] = *a veil*. No plural *رَأْن* is elsewhere recorded. [וראן] Kelim 27, 6.

5 וּפְלִינָא וּמְכַנְסִים וְכוּבַע וְכִים שֶׁל פּוֹנָדָא וּמִטְלִית שְׁטֵלָאָה עַל שֵׁפָה אִם
 פִּשְׁטָה נִמְדַּרְת פִּשְׁטָה וְאִם כְּפֹלָה נִמְדַּרְת כְּפֹלָה; פֶּאֱמָא אֵלֵּי לֹא גו
 לָהּ וְקֹאבְלָה נִנְאָסָה מִנְהָא אַבְאָוִין אֶלְכַּבְאָוִין אֶלְמִסְתַּעְדָּה לְצִנְאָעָה
 אֶלְכַּבְבִּי פֶּאֱמָא אֶלְמַעְדָּאָת מִנְהָא פִּי אֶלְבִּיּוֹת לֹא מִפְּרָדָּאָת לְצִנְאָעָה
 אֶלְכַּבְאָוִין פֶּלֶן תְּקַבֵּל אֶלְנִנְאָסָה אֱלֹהִים אֵלָּא אֵן תְּכֵן מִצְּאָפָה אֵלֵּי כְּלִי אֲכָר
 10 אוּ מִזְוָקָה בִּזְנִפְרָא אוּ זַעֲפְרָאָן וְאִשְׁבָּאָהָמָא לְקוֹ דָּף שֶׁל נִקְתוּמִין שְׁקִבְעוּ
 בְּכּוֹתֵל ר' אֶלְיָעִזֵּר מִטְהַר וְחִבְמִי מִטְמָאִים וְאִצְּא אַרְבּוֹת שֶׁל נִחְתוּמִין
 טְמָאוֹת וְשֶׁל בְּעָלֵי בָתִּים טְהוֹרוֹת סִירְקָן אֵן כִּרְכַּמֵּן טְמָאִין וְקֹאֲלוּ מִפְּנֵי
 מָה אַרְבּוֹת שֶׁל נִחְתוּמִין טְמָאוֹת מִפְּנֵי שֶׁהֵן מִיּוֹחֲדוֹת לְכָלִי שֶׁל בְּעָלֵי
 בָתִּים טְהוֹרוֹת עַד שִׁיחְזוּרוֹם לְכָלִי וּמִנְהָא גִּלְדוּ אֶלְחִיוָאָן אֶלְיָר כֹּאִינָה
 15 פִּי אֶלְמָא מִתִּי דִּבְנָת וְעוֹל עָלֵי אֵן יַעֲמַל מִנָּה כְּלִי לְקוֹ יִכּוֹל אֶפִּילוּ עוֹר הַמִּצֵּה
 וְעוֹר הַחוּפָה כְּמִשְׁמַע תִּלְמָ לֹוֹם אֲשֶׁר יַעֲשֶׂה מִלֹּאכָה בָּהֶם יֵצֵאוּ עוֹר
 הַמִּצֵּה וְעוֹר הַחוּפָה שֶׁלֹּא נַעֲשֶׂה בָּהֶן מִלֹּאכָה וּמַעֲנִי קוֹ עוֹר הַמִּצֵּה מֵא
 כֵּאֵן מִן אֶלְגִּלּוֹד לֹם יִמְלָח וְלֹא אֶדְכַּל אֵלֵּי צִנְאָעָה אֶלְדְּבִאָנָה וְעוֹר הַחוּפָה—
 פֶּאֶלְמִמְלּוֹחַ פֶּקֶט לְקוֹ אִמֹּ ר' חִיָּה בִּר אֲמִי מִשְׁמָא דְּעוֹלָה שְׁלִשָּׁה עוֹרוֹת
 20 הֵן מִצֵּה חוּפָה וּדְפִתְרָא מִצֵּה דִּלֹּא מוֹלִיחַ וְלֹא קְמִיחַ וְלֹא עֶפְיִין חוּפָה
 דְּמוֹלִיחַ וְלֹא קְמִיחַ וְלֹא עֶפְיִין וְקֹאֲלוּ עוֹרוֹת שֶׁל בְּעָלֵי הַבֵּית מַחֲשָׁבָה
 מִטְמָאֲתָן וּמִנְהָא בִּרְקָה מִסִּאֲחָתָהָ ז' קִבְצָאָת פִּי מִתְלָהָ פֶּמָא
 פּוֹקָהָ וְטֹאֲהָ מִן יִטְמִיחָא וְטִיָּה אוּ תַּעַר לִיצְטַנַּע עֲלִיָּהָ אוּ תַנְעַל

1. 7. [אַבְאָוִין] *חֹוָן* or *חֹוָן* a table, or board, has *אֲחֻוָּתָּהּ* and *חֹוָן* for its usual plurals. But *אֲחֻוָּתָּהּ* is not precluded.

1. 10. [דָּף וְכוּ'] *Ibid.*, 15, 2. Read נִחְתוּמִין.

1. 11. [אַרְבּוֹת וְכוּ'] *Ibid.*

1. 12. [מִפְּנֵי וְכוּ'] *Tosefta Kelim baba meši'a* 5, 4.

1. 15. *Sifra Tazria'*, chapter 13, 10 (p. 68 c). A few slight variants.

1. 16. [אֲשֶׁר וְכוּ'] The printed text quotes מִלֹּאכָת עוֹר (Lev. 13. 48).

1. 19. *Shabbat* 79 a, *Gitṭin* 22 a. A few explanatory clauses which interrupt R. Ḥiyya's statement are omitted here. There are one or two other insignificant variants.

1. 21. [עוֹרוֹת וְכוּ'] *Kelim* 26, 8.

30 a

עלי מרהם או צמאר או דון ז קבצאת פי מתלהא מערה ליסתכרם
 בהא כדמה מכנוצה יתחפט בהא לפעל מתל דלך או רקעה מסאחת^{הא}
 קבצאת
 ז ~~אצאבע~~ פי מתלהא פמא פוקהא ~~חנז~~ תדנו מן מית או תסאקפה או
 מעולה לירקע בהא או מסאחתה ז קבצאת פי מתלהא פמא פוקהא או
 5 נטע מסאחתה ז קבצאת פי מתלהא פמא פוקהא או חציר מסאחתה
 ז קבצאת פי מתלהא פמא פוקהא יטא דלך או יגלס עליה או יצטנע
 מן יטמיהא או תסאקף מית או תדנו מנה וגיר דלך מן אלאעיאן אל
 מונסה ומתי אכר מן הרה אלאעיאן אלמקדם דברהא קבצה פי מתלהא
 פמא פוקהא ואעד ליגלס עליה או דון קבצה לים כדם בה ואן צנר
 10 פיקבל ננאסה לקול הבגר מטמא מושום שלשה על שלשה למדרס
 ומשום שלש על שלש לטמת המת השק ארבעה על ארבעה העור
 המשה על חמשה מפין ששה על ששה שוין למדרס ולטמא מת ואיצא
 תניא קוצע מכלם ועשה בגד למשכב אין פחות משלשה על שלשה
 למושב טפח ולאחווה כל שהוא ואיצא ולמעמד כל שהוא: ואיצא
 15 הבגר והשק והעור העור והמפין מצטרפין דתנן המקצע
 מכלן טפח על טפח טמא טפח על טפח למאי חזי אמר ז שמעון
 בן לקיש משום ז ינאי הואיל וראוי להטלית על גבי חמור ואיצא אין

Fol. 30 a, l. 1. [צמאר] Read צמאר = *ḥama* a bandage.

l. 3. [אצאבע] This word was intended by the copyist to be deleted.

l. 4. [מסאחתה] There can be no doubt that some such word as *ḥaṣa*,
 a sack is to be supplied before this word. See the following quotation from
 the Mishnah.

l. 10. Kelim 27, 2.

l. 13. Me'ilah 18 a. Our manuscript is more explicit than the mishnic
 text.

l. 14. [ולאחווה] Read ולאחווה. [ולמעמד וכו'] I was unable to trace
 this sentence in this connexion.

l. 15. Sukkah 17 b. Some sentences are omitted here, and it seems that
 Ḥeḥef had a less complicated reading.

l. 17. [אין וכו'] Tosefta Kelim baba meṣi'a 2, 5.

מטמא אילא המשמש את הצרך ואיצא עור שעשאו לתכריך
 אפילו כל שהוא טמא ואיצא שלש על שלש שנמצאת בתוך
 20 הבית טמאה שכל הבית מן המוצנע מצאה אחר הדלת כסוה
 או פיגדירן צרור בית או מחט תחובה בה או שהיתה פקוקה בכל
 או בקופה טהורה ולעולם אינה טמאה אילא עד שיצניעה לבנר
 ואיצא אם ר' אבא היה ר' נחמיה מטהר במטלית שאין בה שלש על שלש

30 b

דלא תזיא לא לעניים ולא לעשירים והלכה כר' נחמיה וקאלו הורו חכמי
 כר' נחמיה ואיצא שלשה על שלשה שעשאה לאספלונית מלונמא
 ורטיה טמאה ואיצא שלשה על שלשה שנתמעט אף על פי שטהר
 מן המדרס טמא בכל הטמאות: ואיצא תניא פחות משלשה על שלשה
 5 שהתקינן לפיק בו את המרחץ ולנער בו את הקדרה ולקנח בו את הרחים

1. 18. [עור וכו'] *Ibid.*, baba batra 4, 9.

1. 19. [שלש וכו'] *Ibid.*, 6, 6. A few phraseological variants, besides the scribal errors.

1. 20. [כסוהה] This is certainly corrupt. Some editions read *או בכסוהה*, while Z. has *או בסוהה*. It is the latter which our manuscript presupposes.

1. 21. [פיגדירן] Z. has *בפוגדירין*. The construction of our manuscript is decidedly superior, as the *ב* is almost impossible. Read [בית] *בה*. Read [תחובה] *בסל*.

1. 22. [שיצניעה] The printed text has *שיצניענה*! There can be no doubt that our manuscript has preserved the correct reading, since the Tosefta speaks of *מוצנע*.

1. 23. Niddah 60 b. In the printed text *אביי*, not *אבא*, (is it *ראבא*?) is the authority. There are a few more insignificant variants.

Fol. 30 b, l. 1. [והלכה] The printed text gives the name of the authority responsible for this decision. It is possible that Hefeş did not intend the last three words to be part of the quotation. But when he himself decides he usually says *והלכה*. Comp. below, fol. 32 a, l. 18. [הורו וכו'] *Ibid.*

1. 2. [שלשה וכו'] Tosefta Kelim baba batra 6, 9.

1. 3. [שלשה וכו'] Kelim 27, 8.

1. 4. [תניא וכו'] Shabbat 29 a. There are a number of variants besides the scribal errors. Read *תנן*, as it occurs in Kelim 28. 2.

בין מוכן ובין שאין מוכן טמא דברי ר' אליעזר ר' יהושע אומ' בין מוכן ובין
 שאין מוכן טהור ר' עקיבא אומ' מוכן טמא שאינו מוכן טהור אמ' עולא
 אמ' רבה בר בר חנה אמ' ר' יוחנן דכולי עלמא הניחה בקופסה דברי הכל
 דעתיה עילוה ורקא ולאשפה דברי הכל בטולי בטלה לא נחלקו אילא
 10 שתלאו בבגדו או הניחו אחורי דלת ור' אליעזר סבר מדלא זרקו לאשפה
 דעתיה עילאויה וקאלו הדר ביה ר' עקיבא לנביה דר' אליעזר: ואללכוד
 פחממא כחכם אלחוב לקו' ומנין לרבות את הלכדים תלמי לומ' בגד
 ומנהא איצא סתאיר וקלוע מראכב מתי ערין פיהא ננע כמקדאר ~
 באקלאה או תרנו מן מית או תסאקפה לקו' כל הראוי לטמא טמאת
 15 מת אף על פי שאינו מטמא טמאת מדרס מטמא בנגעים כגון קלע
 של ספינה ווילון ושבים של שבכה ומטפחת ספרים ונגלים פאן כאן
 אלמקדאר אלדי ינגס ענדה אלחוב או גירה נאקצא פתמם הדה בוצלה מן
 גוהר ינגס פלינטר פאן כאנת אלוצלה מן גוהר אתקל ננאסה מן ננאסה
 אלמוצול בה פינגס לדלך אלוצל ואלמוצול בה אדא ערצת להמא או
 20 לאחדהמא ננאסה: ואן כאנת מן גוהר כפיף אלננאסה פלן ינגסא מן
 אלשי אלדי ינגסא מנה מתי כאן אלוצל מן גירה אתקל ננאסה לקו' העשה
 שנים מן הבגד ואחד מן השק שלשה מן השק ואחד מן העור ארבעה
 מן העור ואחד מן המפיץ טהור העשה מן המפיץ ואחד מן העור
 ארבעה מן העור ואחד מן השק שלשה מן השק ואחד מן **הבשר** הבגד

1. 9. [ולאשפה] Read זרקא, [ורקא] Delete the 1.

1. 10. The printed text has במגור [בבגדו].

1. 11. *Ibid.*, 29 b. The reading there is עקיבא ר' הדר וכו'. See also *ibid.*, 40 a. לנביה דר' יהושע.

1. 12. *Sifra Shemini*, section 6, 8 (p. 53 a), where א is inserted before בגד. That seems to be the correct reading, as א is the basis for the derivation.

1. 14. Nega'im 11, 11. A few phraseological variants.

1. 16. The printed text has ונגללון [ונגלים].

1. 21. Kelim 27, 3.

1. 23. Read חמישה [העשה].

31 a

טמא זה הכלל כל שהיבר לו מן החמור ממנו נטמא מן הקל ממנו טהור :
 פאן ננסת ונקצת ועמל מנהא כלים אבר תצלח למא צלחת לה והי
 עלי האל אלביאן אלאיל פהי איצא עלי האל ננאסתהא תלך מתאל דלך קרבה
 נקצת פעמל מנהא סטיחה פאמא אן צנע מנהא שכלא אברא לא יצלח
 5 למתל דלך בנטע ואשבאחה פטאהרא לקו' המת שעשאה שטיח ושטיח
 שעשאו חמת טהור המת שעשאה תרמל ותרמל שעשאו חמת כר
 שעשאו סדין וסדין שעשאו כר בסת שעשאה מטפחת ומטפחת
 שעשאה כסת טמא זה הכלל כל ששינהו לשמו טמא לשם אחר
 טהור וקאל רבות' פי ונוב אלטמאה באלעזימה ואלקצד כל הכלים
 10 יורדין לירי טמאתן במחשבה ואין עולין מידי טמאתן אילא בשינוי
 מעשה והמעשה מבטל מידי מעשה ומיר מחשבה והמחשבה
 אינה מבטלת לא מיר מעשה ולא מיר מחשבה : גרץ בסיט הרה
 אלהלכה הו אן סאיר אלכלים תנגם באלעזימה ולא ירתפע מנהא
 חכם אלננאסה מהמא הן כדאך אלא בתניירהא עמא הי עליה
 15 ונקלזא מן אלהיאה אלתי הי עליהא אלי הואה אכרי יסקט חכם
 תלך אלהיאה ואלעזימה בהא איצא ואלעזימה בנקלהא אלי מא
 לים בכלי לא יסקט ענהא אלננאסה מהמא הי כלים ולא עזימה
 גירהא תקדמתהא' מעני דלך כל הכלים יורדין לירי טומאתן
 במחשבה הו מתי עום צאחב כלים מכצועה אן יעמל מנהא
 20 כלים או ינקלהא אלמעני אבר ואן לם יגירהא מן צורתהא אלתי

Fol. 31 a. l. 1. [נטמא] The mishnic text has טמא.

l. 2. ונקצת Read ונקצת.

l. 3. [אלביאן] Read אלביאן = كَيْلَان state, condition.

l. 4. [נקצת] Read נקצת.

l. 5. [בנטע] Read חמת. Kelim 28, 5.

l. 7. [בסת] Read כסת.

l. 9. [כל וכו'] Ibid., 25, 9. Slight variants.

l. 15. [הואה] Read היאה.

l. 20. [אלמעני] Delete the א as dittography.

הו עליה פתנגם לרלך מתי רנא מנהא מא יננסהא
 פאן באן צאחב אלכלים צאנע יצנעהא ליביעהא פלם תוהר
 עזומתה פימא הו עאום עלי ביעה מן דלך לקו' עורות

31 b

של בעל הבית מחשבה מטמאתן ושל עבדן אין
 מחשבה מטמאתן של נגב מחשבה מטמאתן
 ושל גולן אין מחשבה מטמאתן מפני שלא נתיאשו הבעלים
 וקאלו ואילו עורות טמאות מדרם עור שחשב עליו לשטיח עור ~
 5 סקרטיא עור קטבליא עור חמור עור החמר עור הכתן עור הרופא
 עור הערסה עור הלב של קטן עור הבר ועור הכסת מדרם עור הסרק
 ועור הסורק ר' אליעזר אומ' מדרם וחבמ' אומ' טמא מת וקאלו
 פימא ינתקל מן אלנאסכאת מן כלי אלי כלי אג' מר לא תצא בהמה
 לא בזוג שבצוארה ולא בזוג שבכסותה ולא בחותם שבצוארה ולא
 10 בחותם שבכסותה וזה וזה אין מקבלין טומאה וזוג דבהמה לא מקבל
 טמאה והתניא זוג של בהמה טמא ושל דלת טהור של דלת ועישאו
 לבהמה טמא של בהמה ועישאו לדלת אף על פי שקבעו בדלת וחברו

l. 23. Kelim 26, 8.

Fol. 31 b. The beginning of the first three lines in the manuscript has traces of some writing which was obliterated; but the continuity of the text is not disturbed thereby.

l. 3. [מפני] The opinion of Rabbi Simeon fell out through homoioteleuton.

l. 4. Kelim 26, 5.

l. 5. [עור החמר] These two words are missing in the printed edition, where they fell out through a sort of homoioteleuton. Maimonides comments upon עור החמור and עור החמר separately. But in the mishnic text printed above the commentary the latter words are missing. The discrepancy escaped Derenbourg. [הכתן] Insert עור הכתף after this word.

l. 6. [הסרק] Read הסרוק.

l. 7. [הסורק] After this word, too, there are traces of obliterated writing.

l. 8. Shabbat 58 a. The first sentence is differently arranged in the printed text. There are also a few phraseological variants.

במסמרים טמא שכל הכלים יורדין לידי טמאתן במחשבה ואין עולין
 מידי טמאתן אילא בשינוי מעשה לא קשיא הא דאית ליה עינבול דא
 15 דלית ליה עינבול: פאמא אלתי לא נו להא ולא תקבל ננאסה פמנאה
 כלי עין תכדם כדמה קריבה וכדמה בעידה פאמא אלקריבה פלא תננס
 והי סלאים וכלאליב ואנטיה מכצוצה ומנאיר מכצוצה איצא:
 פאמא מא יכדם כדמה בעידה פיננס: פאמא אלקריבה פתכדם בראתהא
 ואלבעידה פתכדם גיראה מן אלכלים מנאה מנאיר וסמאטאת וגיראה אד הרה
 20 כדמה אלנאסאן ואלכלים אלמסכדמאת לאכל אלמצטנעאת מן אלנאגדיה
 כקצאע וגצאיר וגמאמאת וסכאריג וגיראה פמא כאן בהדה אלצפה פיננס
 מתי ערין להא מא יננסהא לקו' העשוי לשמש את האדם כנון הסולם וכנון
 הקולב ומנורה ואנחותה טהורין העשוי לשמש את האדם ואת משמישי האדם

32 a

כנון השלחן והטבלה והדולפקי טמאים וקאלו איצא כלי עין יכול הסלם
 והקילב והנחותה והמנורה תלמ לומ מכל כלי עין ולא כל כלי עין או יכול

1. 14. Read הא [רא].

1. 19. Only سَمَاطٌ in the sense required here, not سَمَاطَةٌ, is recorded by Belot. But the latter is probably a *nomen unitatis*.

1. 20. [אלנאגדיה] This is اَغْدِيَة, plural of غَدَاة, not اَغْدِيَة, plural of غَدَاة, as the latter is restricted to *food eaten in the morning*, that is to say, *breakfast*.

1. 21. Read בקצאע. [ונאמאאת] Only جَامٌ is recorded in the lexica. But there may be a *nomen unitatis* جَامَةٌ. [וסכאריג] The plural of سَكْرَجَةٌ is nowhere else given.

1. 22. [העשוי וכו'] Tosefta Kelim baba meš'a 6, 7. [הסולם] The printed text has את הכלים after this word. This seems to be the correct reading as three classes are spoken of.

Fol. 32 a, l. 1. [כלי וכו'] *Sifra Shemini*, section 6, 4 (p. 52 d). The passage there is corrupt, and a comparison with the preceding citation from the Tosefta will leave no doubt that, with the exception of one scribal error, the original reading is here preserved. See also Tosafot Menaḥot 96 b under heading ולרברי, where this Baraita is quoted, and substantially agrees with our text.

1. 2. [מכל כלי עין] *Sifra* has מבלי עין, which does not occur in the Pentateuch.

שאני מוציא את השלחן ואת הטבלה ואת הדולבקי תלמ' לז' כל כלי עין ריבה
 מה ראית לרבות את אלו ולהוציא את אלו אחר שריבה הכתוב מיעט תלמ'
 5 לז' כל כלי עין מה כלי עין מיוחד שהוא משמש את האדם ואת משמ[שי]
 האדם אף אני ארבה את השלחן ואת הטבלה ודולבקי שהן משמשים את
 האדם ואת משמשי האדם ומוציא את הסלם שהוא משמש את האד[ם]
 ואינו משמש את משמשי האדם והקילב והנחותה והמנורה שהן משמשים
 את משמשי אדם ואינן משמשים את האדם* ומנהא כרקה מסאחת[הא]
 10 ז קבצאת פי מתלהא דמי בהא פי מזבלה ומא אשבהא ומנהא ז אצאביל[ע]
 פי מתלהא מתי כאנת עלי צמאר או מרהם לקי' שלשה על שלשה שהשל[כה]
 לאשפה טהורה החזירה טמאה לעולם השלכתה מטהרתה והחזרתה ~
 מטמאתה ואיצא שלש על שלש שעשאה לאספלונית מלונמה ורטיה
 טהורה* ומנהא כסיתאת סוא כאנת סאדנה או מרקומה אללהם אלא אן יערן
 15 פוחא ננע או הרנו מן מית או תסאקפה לקי' מטפחות הספרים בין מצוירות
 ובין שאינן מצוירין טמאות דברי בית שמאי ובית הלל אומ' מצוירות
 טהורות ושאיןן מצוירות טמאות רבן גמליאל אומ' אלו ואלו טהורות
 ואלהלכה כרבן גמליאל לקי' ז יוסי וז שמעון אומ' נראין דברי רבן גמליאל
 במטפחת ספרים ובדבריו אנו מודים: ומנהא מצראע מתרס וגלק וספור

1. 3. [מוציא] Sifra has מרבה which gives no sense.

1. 5. [כל כלי עין] Read שק in both cases with Sifra.

1. 8. [והקילב וכו'] This sentence is missing in Sifra, and only the last four words are inserted in brackets. It is obvious that the error there is due to homoioteleuton.

1. 10. [דמי] Read רמי.

1. 11. [צמאר] Read צמאר. See above, note on fol. 30 a, l. 1.
 1. 12. [שלשה וכו'] Kelim 27, 12. The reading there is שלש על שלש. That we have no scribal error here, but a genuine variant, is evident from the preceding line where ז קבצאת טפחים = ז קבצאת is explicitly mentioned. Maimonides had the same reading as that of printed edition, for he says: ינתנם מנהא שלש על שלש אצבעות ולו כאן מרמי עלי מזבלה.

1. 13. [שלש וכו'] Tosefta Kelim baba batra 6, 9.

1. 14. [כסיתאת] Read כסואת or כסיאת.

1. 15. Kelim 28, 4. Slight variants.

1. 18. Tosefta, *ibid.*

1. 19. [ובדבריו וכו'] This is also the reading of the printed text. But

20 אֵלָדִי תַחַת עֵקֶב אֱלִבָּאֵב וְאֶלְעֵקֶב וְאֶלְדְּרוֹנָד וְאֶלְמַתְעֵב אֲדָא כֹּאנַת מֵרַכְבֵּי [ה]
 פִּי אֱלִבְנָא לִקְרָא כָּל בְּלִי מִתְּכֹת שִׁישׁ לוֹ שֵׁם בְּפָנַי עֲצֻמוֹ טַמָּא חוּץ מִן הִרְלַת
 וְהִנְגֵּד וְהִמְנַעוּלָא וְהַפּוֹתָה שְׁתַּחַת הַצִּיר וְהַצִּיר וְהַקּוֹרָה וְהַצְנוּרָה שְׁנַעֲשׂוּ
 בְּקִרְקַע וְסִאִיר מֵאָה תִּקְדֵּם דְּבִרָה מֵעֲמֹל מִן צוּף וְקִטָּן וְגִירָה פְּמִתִּי כֹּאן גּוֹל

Elijah of Wilna suggests reading *וּכְדִּבְרֵיו אֲנוּ מוֹרִים* which is preferable as far as the Hebrew is concerned, as the other expression is rather too strong.

l. 20. [וְאֶלְדְּרוֹנָד] *دَرَوْنَد* *a bolt of a door*. It is a Persian word. See Dozy. [מֵרַכְבָּה] This word is slightly obliterated, but the restoration, *מֵרַכְבָּה* = *مَرْكَبَة* *inserted, fixed into*, is quite obvious.

l. 21. Kelim 11, 2. Slight variants.

l. 22. [וְהִנְגֵּד] Read *וְהִנְגֵּד*.



SOME REMARKS ON THE POEMS ASCRIBED
TO JOSEPH BEN ABRAHAM HAKOHEN

(*ŹQR.*, IV, pp. 621-34.)

ONE of the most worthy and most important tasks deserving the best efforts of Jewish scholarship is the task of making the treasures of the Genizah accessible. This, of course, cannot be accomplished by one man nor in one generation. It will require the combined labours of many scholars pursued through several generations. For this reason we should be grateful to each and every worker in this field who helps to bring us nearer to the goal.

Dr. Marmorstein has already, on several occasions, shown his interest in this branch of research, and has put us under obligation for a number of Genizah publications. His latest contribution brings before us a number of poems which are quite interesting. In the following remarks I merely wish to draw attention to a number of textual errors as well as to a few errors of judgement.

From the fact that the poet compares the events of his life with those of Joseph in the Bible, Dr. Marmorstein rushes to the conclusion that the poet's name was Joseph. If this be a criterion, we might assume that any one comparing his misfortunes to those of Job does *a priori* bear the same name, and probably hails from the Land of Uz. Even if we were inclined to acquiesce in such a rash conclusion, we could not do so in this particular case. For Dr. Marmorstein himself calls our attention to the fact that the name of the writer is mentioned in the verse which reads: *עבדו בן יעשה עם עבדו בן אמתו אברהם הכהן* (III. 46-7). Now, if *עבדו בן* refers to the poet, and *אברהם הכהן* to his father, the word *בן* must be missing between *אמתו* and *אברהם*, else we are

confronted with the unpleasant alternative of reading אמתו אברהם ('his maid-servant Abraham Hakohen'). But aside from this, is it necessary to draw attention to the fact that the Psalmist speaks of himself as עבדך בן אמתך?

There cannot be any doubt, therefore, that the poet is Abraham Hakohen himself, not his son. That he is identical with Abraham ben Joseph Hakohen whom Dr. Marmorstein found in Cod. Adler No. 223, is a matter that cannot be decided by the meagre data before us, כמח אברהם הבן איבא בשוקא דגנייה, nor can we agree with Dr. Marmorstein that the phrase כי ריעות זרים אהבתי ודברי אבות השלכתי (IV. 31) refers to the relation of the poet to the Karaites. As a matter of fact, this particular verse does not refer to the poet, but to the Jewish people. In this, as well as in the preceding stanza, the poet speaks of the Maccabean period.

As to the phrase שנת תתקנ"ד לחרבן הבית, it may be remarked that in all probability it does not belong at the head of the first, but at the end of the fourth poem. For it is most improbable that the poet would commence his composition with a superscription of the date, and even if we were to admit that the superscription belongs to the poem, we have no way of explaining the line ינקום נקמתי מיר מדיני, which separates the date from the poem. This line cannot possibly be the beginning of the poem, since the latter is written in alphabetical order. A plausible explanation is, that what Dr. Marmorstein took to be the first leaf of the MS. is really the last, in which case Poem I would follow Poem IV, and the line in question as well as the date would be the end of Poem IV, instead of the beginning of Poem I. This supposition is made all the more plausible by the fact that the line ינקום נקמתי מיר מדיני rhymes with the last phrase of Poem IV.

It is very much to be regretted that the editor has not seen fit to describe the manuscript properly. He gives us no information as to the size of the manuscript, the number of pages, the character of the writing, and where the pages and lines begin and end. His method of indicating *lacunae* seems to be arbitrary. He also failed to note the scheme of rhymes which is always of great help

in deciphering such ancient texts. For instance, in the first poem, it is to be noted that up to the letter ה each two letters have one set of rhymes, while from the letter ט to the end, each letter has its own individual rhyme. In the second poem each two letters have one individual rhyme throughout the poem, making altogether eleven sets of rhymes. In the third poem, again, each letter has its individual rhyme.

It is true that the manuscript is in a very defective state, and it is practically impossible to restore it, yet, if the editor had studied it more carefully, he could have solved many of the obscure passages which now confront us on almost every line of the poems.

I

l. 2. ונברו, read ועברו.

l. 3. קינים והנה והי, read וקינונים, analogous to (Ezek. 2. 10).

ll. 4-8. While it is impossible to restore these lines, yet, if we bear in mind that each two letters of the acrostic have one set of rhymes, it becomes possible to indicate at least the beginning of each acrostic as well as the rhyme. Thus the acrostic of the נ and the ד must have extended from the word נברה to רדפוני. The acrostic of the ה began with הכר ה' (not חכרה) and ended with וצרתי, the acrostic of the ו began with והלא (l. 6). Since the rhyme is the same in the two acrostics ה and ו, we may substitute for בררשי (l. 8), בחרתי to rhyme with וצרתי (l. 6).

l. 9. Supply at the beginning of line לא מישלתי, and read ברוחי instead of לרוחי. Comp. Prov. 16. 32.

l. 10. וְלֹא מִצָּאֲתִי לְמִפְתִּי צָרִי, read יִצְאֲתִי לְמִכַּת צָרִי. Comp. Jer. 8. 22.

l. 12. Read טוב מות מחיים אמרת, כי צר לא חס.

l. 14. Read ויורקו בי הין אחר הין, שִׁיתִּי הָיִיתִי לְפָל מְנוּד לָאֲרִין. Comp. Ps. 69. 13; 44. 15; Prov. 23. 29.

l. 15. If the acrostic of the letter כ would begin with the word כילא, as the editor indicates, the preceding phrase would have to belong to the previous stanza. This, however, is impossible on

account of the rhyme. Read, therefore, בּוֹאֵת בְּרוֹעַ מַעֲלָלִי. *Ibid.*
כִּילֵּא חֲמָטִי, read כִּילֵּא חֲמָטִי.

l. 18. מְרוֹם דִּין. Comp. the expression מְרוֹמָה דִּין, b. Sanhedrin 32^b.

l. 19. בְּבֵית כָּלָא בַעֲשׂוֹתִי. Comp. Jer. 37. 15.

l. 20. נִגְרוּ בְּבִכּוֹת, read נִגְרוּ בְּבִכּוֹת, comp. Lam. 3. 49.

l. 21. בִּיד כָּל צָר וּמִינִי, read יִמּוּנִי, and comp. Isa. 49. 26.

„ וּלְקַחַת כְּמוֹנִי, read וּלְקַחַת מִמֶּנִּי.

„ וְאוֹמֵר עַד מָתִי ד' אֱלֹהִים. The editor refers to Isa. 6. 11.
But this reading yields no rhyme. Read, therefore, עַד מָתִי אֱלֹהִים
אֲדוֹנִי, and comp. Joshua 22. 22.

l. 22. וְהוֹצִיאֹנִי מִרְעָה אֶל רְעָה, read וְהוֹצִיאֹנִי מִרְעָה אֶל רְעָה, comp.
Jer. 9. 2.

l. 25. Read וּבֵיתָם תִּהְיוּ.

ll. 25-6. פָּצוּ עָלַי בְּפִיהֶם וַיִּשְׁחָקוּ וַנִּמּוּ: יִקְחוּ מִמֶּנּוּ וְהִנֵּקָה תִּנֵּקָה, read

פָּצוּ עָלַי בְּפִיהֶם וַיִּשְׁחָקוּ

וַנִּמּוּ קָחוּ מִמֶּנּוּ וְהִנֵּקָה תִּנֵּקָה

ll. 26-8. These three lines are entirely unintelligible in Marmorstein's text, yet with but slight changes they become very clear. Read:

צוּר עַד מָתִי קִנְאוּתִינוּ לֹא תִקְנֵא

וְתִשְׁמַע שׁוֹעֲתֵינוּ וְתַעֲנֵה

וְתַרְוִיחַ לָנוּ מִכָּל אוֹיֵב וּמִפְּעֻלָּה

וְתִהְיֶה סִבִּיבוֹתֵינוּ חוֹנֵה

For the last line, comp. 1 Sam. 26. 5.

l. 28. כִּי הִצְרּוּ לָנוּ צָרִים, read כִּי הִוָּצַר לָנוּ צָר.

l. 32. Supply the word חַיָּה after כָּל כְּהִנָּךְ אֲבִי.

II

If this poem had been printed in the proper verse form, it would have been found to consist of eleven quatrains, each quatrain having one uniform rhyme, and comprising two letters of the alphabetical acrostic with two verses to each letter. The last verse of each of the first seven quatrains is a quotation from Ps. 130.

ll. 1-2. באנחת . . . לפניך. It is evident that the first couplet cannot end with לפניך, since the rhyme of this quatrain ends in ני, nor does דווי give satisfaction. Read, therefore, as follows :

אזעק אליך שוכן מעוני
מקוצר רוח ומרוב יגוני
[בשפכי שית] לפניך באנחת לבי ורמעת עיני
ממעמקים קראתיך אדני.

ll. 3-4. Here, again, the word ומלארוב gives no meaning. I would suggest reading אם לא רוב ראגתי ועמלי, but this also is not satisfactory, because we should expect this verse to begin with the letter ד.

ll. 4-6. These three lines comprise the third quatrain, having the letter ה and ו in acrostic. From the last word of the quatrain, יעמוד, it is evident that we should expect three other words ending in וד, but in the text before us we find only one עוד in l. 5. It is also evident that we cannot begin the second couplet with the word והם as M. does, since we must have two lines in each couplet. Aside from this, the phrase ושל קיבול התשובה has no meaning. Equally obscure is the passage והם עלי, and M.'s reference to B. Berakot 7^b and 10^b does not help to make it clear. To clear away these difficulties, I suggest reading as follows :

הלא אתה הבטחת מראש כי קיבול התשובה תחמד
כי אין אדם שלא חטא עוד
ועד יום צאת הנפש תקבלו ותסעור
כי אם עונות תשמור יה ד' מי יעמוד

For the first line, comp. the well-known passage ועל התשובה ועל הבטחתנו (ערבית ליו"כ) מראש הבטחתנו and Ezek. 18. 23; for the second line, comp. 1 Kings 8. 46; for the third line, comp. B. Berakot 10^a: אפילו חרב חדה מונחת על צוארו של אדם אל ימנע עצמו מן הרחמים ועד יום מותו החכה לו אם ישוב מיד תקבלו ותסעור (מוסף לר"ה).

8. רוחה, read רוחה.

l. 11. 'ר' תקרא דרור, read לשבויים תקרא דרור, comp. Isa. 61. 1; *ibid.* מישמורת, read מישומרים.

l. 12. עולם, the rhyme demands וזרוב עונים.

l. 15^a. Comp. Lam. 3. 56; 15^b, comp. Ps. 68. 6.

ll. 19-20. The editor failed to indicate the letter ת of the acrostic, and through faulty punctuation overlooked the rhymes. Read as follows:

שמך עלינו נקרא, שמור יחידתי מכל צרה
תנחמני וזאת אזכרה, אברך המלך הגדול הנורא

III

This poem consists of twenty-two quatrains, each quatrain having one uniform rhyme.

ll. 1-2. Read

אפחד בכל יום ונפשי תזעק
בעת נמשני צור והרבו [עלי הריק] (comp. Ezek. 28. 7)
בבית כיפה שמני ואין לי פורק
אותה נפשי

l. 3. The phrase כאשר עבר על יוסף could not possibly be the end of the preceding stanza, since the rhyme requires a word that ends in ק. The acrostic, again, demands here a word beginning with ב. I therefore suggest reading

בן יטבע עטרה שנה יוסף כאשר התחלה רעתו

ll. 5 and 9. The editor omitted to indicate the missing words by the usual sign of dots.

l. 13. כי נם להם, read כי נם (לנו) לנו.

l. 16. וכל רע ומחרף אותי יסובבה, read וכל רעי מחרף אותי יסובבה.

l. 17. העיר, read הזעיר.

l. 18. טרחו, *ibid.* אוהבי עלי הנעיר, read אוהבי עליה יעיר, read טרח.

l. 19. Remove the second comma and read ברזל שם ברנליו ויפילו לבלא.

l. 20. The phrase אין לו נצר ידו רעה has no meaning, and

besides, the rhyme requires a word ending in לא, or לה. Read, therefore, as follows: ואין חלה מבם. אין לו בצר ידיר וחלה. 1 Sam. 22. 8. The scribal error can easily be explained. The יד of ירו are the last two letters of ידיר, while the ו belongs to the next word. The ה lost its left stroke and became a ר.

1. 22. נחמות, read תחנות.

1. 24. Read ומעליה וחכם. Comp. Gen. 39. 23; 41. 39.

1. 25. כל ראויים, read רואים.

1. 27. Supply לארץ after מחוץ.

11. 27-9. The words כנפרד, כנפרתי, and המנודים yield no meaning. Read, therefore, as follows:

מאביו ומאחיו נפרד, ובאשת אדוניו כי פתח מרד

גם אני מאחי וריעי כנפרד, לבי נמס כמים המוגרים במורד

For the last phrase comp. Mic. 1. 4.

1. 29. Instead of a period there should be several dots indicating the *lacuna* which may be supplied by the word וימאן. Comp. Gen. 37. 35.

1. 30. במוותו. The rhyme demands a word ending in תם. Read perhaps כמוהם (like them).

„ נחמוני גם אני נחמותי.

1. 32. Supply הכירוהו at the end of line.

1. 33. A *lacuna* should have been indicated after החסד. Supply, perhaps, עשוהו.

1. 34. בשלום, the rhyme requires a word ending in קים. Read perhaps מריקים. Comp. Gen. 42. 35.

1. 36. אני אחיכם יוסף לי. The editor has failed to see that the rhyming words of this stanza end in לו. Read, therefore, אני אחיכם יוסף, נבהלו. Comp. Gen. 45. 3.

1. 40. קולו שמעו, read ישמעו, comp. Gen. 45. 16.

11. 41-2. בעבדים איש על חובו, read בעבדים. איש יחובו.

1. 43. ראו פניך, read ראה.

1. 45. ברית פורת, read ברית כרות.

1. 48. תמהה אצמתי ותמהה ישועתי, read תמהה . . . ישועתי.

1. 50. Read אל חשמה אויבתי כי נפלתי קמתי וי' עירני.

IV

This poem cannot be understood properly without a knowledge of its technique. Its construction is as follows: every stanza consists of five verses with one uniform rhyme, followed by a refrain which consists of four verses with one uniform rhyme, and one of the eighteen benedictions. In the opening stanza the poet states that this hymn was composed to commemorate some great misfortune which befell him, while in the refrain he goes into detail, stating that on the fifteenth day of Kislev he was unjustly thrown into prison, and concludes with an appeal for divine mercy for the sake of Abraham, ending with the first of the eighteen benedictions, בא"י מִגֵּן אֲבֹרָהֶם. Altogether there are eighteen stanzas followed by the same refrain, excepting that each subsequent refrain mentions some other Biblical character and concludes with another of the eighteen benedictions. Of course these historic personages are not mentioned by name, but are alluded to by some Biblical phrase. In this way our poem reproduces all the eighteen benedictions, and like the well-known litany, מי שְׁעִנָּה, enumerates most of the important Biblical characters. It may be worth while to note, by the way, that in the benedictions the poem follows the Palestinian Ritual, with the exception of the benedictions אֱלֹהֵי דֹד בּוֹנֵה יְרוּשָׁלַם and מִבְּטֵחַ לְצַדִּיקִים.

For the sake of clearness I reproduce here the first stanza and its refrain, in the form in which it should have been printed, incidentally correcting the text in a few places:

אֲזָכֹר וְאֲזָכִירָה מְרִירַת יוֹם זֶה
וְאֲשֶׁר הִבִּיאוּ עָלַי עוֹנוֹתַי אַחֲזָה
הַשִּׁיגוֹנִי לְכַדּוֹנִי אוֹתִי לְבוֹזָה
עֲצִיתִי וְקִמּוֹ [כִּי אוֹיְבִי] נִפְשִׁי וְנַמְתִּי הַכּוֹזָה
יִקְבֵּל צוֹר שׂוֹאֵלוֹ וּמִשְׁמָן בֶּשֶׁר צָרִיו יִרְוֶה
בְּכֶסֶלֹו בַחֲמֹשֶׁה עֶשֶׂר בּוֹ הוֹשַׁלְכְּתִי לְבֵית כְּלָא
לֹא אִמָּת אוֹי חֲמוֹס מַעֲלָה
עַד יִשְׁקֹף בְּרַחֲמָיו עוֹשֶׂה פֶלֶא
וַיִּנְנִי וַיַּעֲלֵנִי בִזְכוּת שֶׁאֵמַר לוֹ אַחֲרֵי הָרַבִּים הָאֵלֶּה
בְּא"י מִגֵּן אֲבֹרָהֶם

It should be noted that from the fourth stanza to the end of the poem the refrain is abbreviated, a fact which will help us solve many of the obscure passages. The abbreviation is done by omitting the second line entirely and giving the first word of the third line (ער) followed by the fourth and fifth, which are new in each refrain.

l. 10. ביר מישנה, read *מְעֵנָה*.

ll. 12-13. יחיה רוחי [ויצילני] ויחיה רוחי . . . ועקר והושם עתידה, read *יחיה רוחי [ויצילני] ויחיה רוחי . . . ועקר והושם עתידה* [בזכות], comp. Gen. 22. 9. The reference is to Isaac.

l. 14. The rhyme demands the word *בחלום* after *הראני*.

l. 15. Read *ואנזור תפלה וצום*.

l. 19. בזכות נם לבן מר אלה, read *בזכות נם לְבִן מִי אֱלֹהִים*, referring to Jacob, comp. Gen. 48. 8.

„ *החוב שחב*, read probably *זכרתי החובשת*.

l. 23. Here we have the first abbreviation of the refrain. The word *ער* is not to be taken with *יחנני*, but is the beginning of the third line of the refrain. The fourth line of the refrain should read *ויחנני דעה בצדקת נם סלח נא לעם אלה*, referring to Moses, comp. Num. 14. 19.

l. 29. The word *ער* is the beginning of the third line of the refrain, and is immediately followed by the fourth, which should read *יקבל תשובתי בזכות ויתן את הקטרת ויכפר על עם אלה*, referring to Aaron, comp. Num. 17. 12.

ll. 33-4. The same abbreviation of refrain. The reference here is to Phineas, comp. Num. 25. 11.

l. 35. Read *לאבות [ברית ברת]*.

l. 39. ער ויצילני בזכות, *עמו יצילך*, העמיד חימה לעם אלה, read *ער ויצילני בזכות, עמו יצילך, העמיד חימה לעם אלה*. The first word *ער* being the beginning of the third line of the refrain, the rest is the fourth line. Reference here is to Joshua. Comp. Joshua 10. 12.

l. 44. The text is very defective. Read perhaps *בזכות [אמרה]* *בזכות [אמרה]* referring to Deborah. Comp. Judg. 5. 9.

l. 48. בזכות נם ענו בי ננר יי, read *נם ענו בי ננר יי*, referring to Samuel. Comp. 1 Sam. 12. 3.

ll. 50-1. שומע אנקת [אביונים], *לאסירים*, שומע אנקת *לאסירים*, read *שומע אנקת [אביונים], לאסירים*, *תקרא דרור*.

11. 52-3. בזכות [משכמו ומעלה נבה] read בזכות . . . מעם אלה, referring to Saul. Comp. 1 Sam. 9. 2.

1. 57. The fourth line of the refrain should read צדקני בצדקת נָם, referring to David, comp. 2 Sam. 24. 17.

11. 58-64. Judging from the sequence of the benedictions, as well as from that of the Biblical personages, these seven lines represent one stanza. On the other hand, we find here two sets of rhymes, one ending in *שי* and the other in *לי*, and the paragraph is too large for five verses. We must, therefore, assume that for some reason the poet used here a stanza of ten verses with two sets of rhymes.

1. 58. בהשתטף עלי נפשי read בהשתטף עלי נפשו, comp. Jonah 2. 8.

11. 59-60. Read בנים עלו עלי [מכף רגלי ועד ראשי], עד . . . מרעים [בי] קמו.

1. 64. Read בזכות [נָם בנה בניתי] בית זבול לעם אלה, referring to Solomon, comp. 1 Kings 8. 13.

1. 68. The reference is undoubtedly to Elijah. The allusion may perhaps be restored as follows: [בזכות נָם ענני וידעו העם] האלה. Comp. 1 Kings 18. 37.

1. 73. בזכות נָם ויהי נא פי שנים עם אלה read בזכות נָם ויהי נא פי שנים, referring to Elisha, comp. 2 Kings 2. 9.

1. 75. וחמתך read והמסך.

1. 78. The reference is to Isaiah. Comp. Isa. 1. 2.

11. 82-3. Read ותחזיר עבודה לביתך בזכות בצדק הוכיח לעם אלה, referring to Jeremiah, or probably to Hezekiah. Comp. והוכיח לענוי ארין, Isa. 11. 4.

1. 88. Read בצדקת צורת הבית ראה והניד לעם אלה, referring to Ezekiel. Comp. Ezek. 43. 10.

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THREE JUBILEE VOLUMES

THE most delicate compliment that one could pay to a teacher or to a fellow student is to produce something in the field of his immediate interest and dedicate it to his name. The custom has thus arisen of issuing a volume of essays, contributed by friends and fellow scholars, in honour of a man who has devoted his life to scholarship. It gives the opportunity to his admirers to express their feelings of appreciation of his work without being forced to indulge in personal laudations and empty platitudes. These volumes, of which there are now quite a few in the field of Jewish literature, contain many valuable studies, the result of original research and investigation. The student, who in the future will consult these volumes, will always associate the individual contributions with the name of the celebrant in whose honour they were written.

I

THE LEWY 'FESTSCHRIFT'

Festschrift zu Israel Lewy's siebzigstem Geburtstag. Herausgegeben von M. BRANN und J. ELBOGEN. Breslau, 1911. pp. vi + 436 + 212 (תפארת ישראל).

Israel Lewy has long been recognized a master in Rabbinic literature, although his writings are but few in number. Not so much by what he actually accomplished as by the incentive he gave to others, and by the stimulus he offered to students through his acute reasoning and original propositions, did Lewy establish for himself an important position among Talmudic scholars. Having been connected for nearly thirty years with the Breslau Seminary, an institution from which came many of the present generation of Jewish scholars, Lewy also exerted

a personal and direct influence on modern Jewish scholarship. The touching references to the personality of the man in several of these articles are the finest testimony to the human side of the celebrant. Lewy first attracted attention by a short essay on the composition of the Mishnah, and later by another pamphlet on the *Mechilta* of R. Simon b. Yoḥai. His notes on the Jerusalem Talmud reveal to us the mature scholar and the deep thinker, and are brimful of brilliant suggestions. Scant as his literary productions are, they served as the themes for many a treatise and stimulated many a study in the domain of Rabbinic literature.

It is but natural that many of the contributions included in a volume which is dedicated to his name should deal with Rabbinic subjects, especially with early Tannaitic literature. The volume has two parts—a German (including also one essay in English), and a Hebrew part. The editors have done their work exceedingly well, and the touching remarks made in an introductory paragraph indicate that to them also it was a labour of love.

The German portion of the volume begins with an essay by W. Bacher, which consists of two lists of Palestinian and Babylonian Amoraim to whom Tannaitic traditions were delivered. These lists are arranged in chronological order and provided with many illuminating notes. This is part of a work which Professor Bacher had in preparation, dealing with the traditions that were delivered in the schools of Palestine and Babylon.

Another essay, dealing with early Tannaitic literature, is that contributed by Ludwig Blau. Following up his 'Beiträge zur Erklärung der *Mechilta* und des *Sifre*' in the Steinschneider Jubilee volume (1896), Dr. Blau offers here some very striking interpretations of several difficult passages in the *Mechilta*. His assumption that in many places, the abbreviations ר"א and ר"ב are to be interchanged, is most plausible and is borne out by several passages which receive an entirely new meaning through the introduction of such a change. Many of the emendations found here are based on the text of *Mechilta*

de R. Ishmael, recently edited by D. Hoffmann. His emendation *על מנת ליער* (אלא) לא ימכור (p. 62) is much more probable than Weiss's emendation *על מנת* (שלא). For the distinction between *נכרי* and *נוי*, see also *Ḳiddushin* 19 b. Either of the two explanations found here on the difficult passage with reference to *Exod. 22. 8* (p. 64) is much more convincing than Weiss's emendations, since the Masoretic text has *ירשיען* and not *ירשיעון*.

The German part of the book concludes with an exhaustive treatise on the part taken by R. Simeon in the composition of the *Mechilta* which is attributed to him. The author, Dr. Louis Ginzberg, indicates in a note that this is a chapter of a larger work on this subject that he is preparing for publication. This article is most fittingly included here since Lewy was the first to write on the subject, and to formulate the opinion that R. Simeon had nothing to do with the work usually ascribed to him. Dr. Ginzberg, on the other hand, endeavours to maintain the traditional authorship of the book and establishes his thesis by a series of proofs. He first shows that the proofs adduced by Lewy against R. Simeon's authorship of the *Mechilta* are untenable, by quoting various passages and commenting upon them. Some of his explanations are rather forced, especially the one in which the *Mechilta* quotes an opinion of R. Simeon, contradictory to the opinion attributed to him in the *Babli* and *Jerushalmi* (see p. 412, where the word *וגרשה* is forced to mean 'driven out' instead of its regular meaning 'divorced', and even then an emendation is necessary to reconcile the conflict; comp. *supra*, p. 114, n. 3. The first explanation given here *הרי תנאי אלכא דר"ש* is more plausible). Still, our author's thesis is not impaired thereby, since he is well fortified by tradition and needs only show that the proofs against it are not sufficient to warrant its abandonment. Dr. Ginzberg's position becomes much stronger when he proceeds to array positive proof for the correctness of the traditional authorship of the *Mechilta*. He quotes nearly forty passages from the *Mechilta* in which an opinion is expressed, without mentioning the author's name

(סתר), and this opinion is found in other places attributed to R. Simeon. This presents a most powerful argument for revising the assumption made popular by Lewy and others.

Dr. Ginzberg admits that the present text of the Mechilta is not exactly the same as it was when it left the hands of its author. It was, no doubt, edited by other hands, as is shown by the many opinions included therein to which R. Simeon would never have subscribed. He quotes several passages which apparently contradict opinions expressed by R. Simeon elsewhere and tries to minimize the contradiction by emendations or further interpretation. Not satisfied with this, Dr. Ginzberg goes still further to disprove the allegation that many of the sayings of R. Simeon appertaining to Exodus are missing in the Mechilta. He tries to show that some of the sayings attributed in the Mechilta and elsewhere to R. Simeon are not really his, or do not belong to Exodus. Hence they were omitted in the Mechilta attributed to him.

Incidentally, Dr. Ginzberg displays great erudition in interpreting many difficult passages in a novel and convincing manner. We look forward with eager anticipation to the appearance of the promised volume on this most interesting subject.

Dr. S. Horowitz offers some miscellaneous notes, mainly Halakic, on Sifre and Baraita. In his endeavour to show the origin of certain Baraitot, the author does not hesitate to emend the text. Some of these emendations, though apparently plausible, are forced and unconvincing (e.g. p. 197, his emendation to Ketubbot 3 b).

Fuller and more extensive notes to tractate Shabbat, both Babli and Jerushalmi, are contributed by Dr. S. H. Margulies of Florence. Some of these are quite elaborate and display considerable scholarship, as the excursus on the expression לבטל בלי מהיכנו (Heb., pp. 180-84).

H. P. Chajes publishes here several notes to Berakot which he had originally intended as additions to an edition of the notes on the Talmud by his famous grandfather.

A valuable study in the methodology of the Talmud is con-

tributed by Ch. Tschernowitz, which forms the initial article of the Hebrew portion of the book. In it he discusses the important principle of majority in the case of a conflict of opinion and lays down the following rule: The opinion of the majority became binding only when it was established by an actual vote at a special sitting of the Academy. The minority then had to submit to the opinion of the majority. Even then the opinion of the majority became binding only on those who were present at the time, while a future generation might reconsider the question, take a new vote, and decide it in accordance with the opinion of the majority of that time. As long as no vote was taken, although the opinion of the majority was known, any individual was justified in deciding for himself in accordance with the opinion of the minority. These principles, with the various modifications given by the author and corroborated by many quotations from Talmudic literature, may have practical significance, even at the present, should at any time a recognized synod assemble to consider matters of Jewish law and practice.

Dr. Adolf Rosenzweig begins his lengthy and exhaustive contribution on the 'Al-Tikri Deutungen' with a touching personal tribute to the celebrant. Beginning with an introductory chapter on the history of Talmudic exegesis, the author takes up in detail the various forms of the Al-Tikri methods of interpretations. He quite properly remarks, at the very outset of his thesis, that these interpretations were never meant as textual emendations, but, rather, as exegetical notes, used mainly for homiletic purposes. It was either wilful spite or their inability to understand the Rabbinic point of view, that made the Karaites criticize the Rabbis for this manner of interpreting Scriptures. The author then proceeds to analyse this method, quoting 172 cases of Al-Tikri interpretations, which he classifies into eleven distinct classes.

Dr. Rosenzweig probably overdraws the influence of the spread of Christianity on the method of interpretation followed by R. Akiba (p. 213). The difference between his system and that of his contemporary R. Ishmael was the result, more of the

personal characteristics of the two men than of their attitude to the sanctity and inviolability of the Scriptural text. The thirteen hermeneutic rules of R. Ishmael were not rules of logic. R. Akiba, instead of putting fetters on tradition (p. 214), allowed greater freedom to the student in the interpretation of Scriptures (see Weiss, *Dor*, II, p. 101, &c.).

Although the Hebrew text of the so-called Fourth Book of Ezra has not yet been found, it is generally admitted that the groundwork of this book is of Jewish origin. D. Simonsen endeavours to show the existence of a Midrash of the thirteen attributes of God (Exod. 34. 6, 7) imbedded in this book (ch. vii, ver. 132-9). His interpretation of 'iudex' in ver. 139 to correspond to נֹשֵׂא עֹן is particularly ingenious and sounds quite plausible. The 'higher Anti-semitism' of some of the modern Christian Bible students is severely scored in a note on p. 278, where it is shown how much prejudice may affect the investigations of otherwise liberal scholars.

Professor Krauss discusses various terms found in the Talmud to designate the places where the rabbis and their disciples assembled for study. Beginning with the terms מְקוֹם הַדִּבּוּר and סְנֵה־דְרִין, he proceeds to explain in detail the term כְּרֶם which he takes in its literal sense as over against the traditional explanation that it was used metaphorically (as also Levy in *Neuhebr. Wörterb.*, II, 408). The vineyard was used as a place of assembly for scholars because it was least likely to attract the attention of the Romans. In a similar manner Krauss also explains the term עֲלִיָּה which also served as a secret meeting-place. This leads to the explanation of the expression גִּתָּהּ רַבִּי רַב in Sura, which was probably a large garden from which sufficient produce was obtained to sustain the large number of students that flocked there, numbering at one time 1,200.

Immanuel Löw endeavours to prove the identity of the Talmudic חֲצֵב with the sea-onion (*Urginea maritima*) which served the purpose of marking off the boundaries of fields as did also the Arabic *başul*.

Professor Büchler presents an exhaustive study on the manner

of betrothal as distinct from marriage, and the status of a woman betrothed to a priest in the first two centuries of the present era. He first discusses the various forms of betrothal and, incidentally, throws new light on several obscure passages in early Tannaitic works. The marriage contract (Ketubah) of the betrothed forms the subject of the second chapter, while the third chapter is devoted to the consideration of the status of the woman, betrothed to a priest. The author lays bare the influence of the economic conditions obtaining in Palestine, about and after the Hadrianic persecutions, on the marital relations in Jewry.

The exemption of woman from certain religious duties, according to Jewish law, is the subject of Dr. Zuckermann's contribution. Following his theory regarding the antiquity of the Tosefta, he takes his sources mainly from this work and compares them with similar expressions in Babli and Jerushalmi. He discusses, in order, the obligations of woman regarding the reading of grace after meals, the blowing of the Shofar on Rosh Hashanah, Zizith, Tefillin, and other ritual practices. We should like to know his source for the assertion (p. 169) that women are obliged to attend public service on Sabbaths and Holidays. While it is true that women are obligated to pray, although there is quite a difference of opinion as to the nature of this obligation, we find no mention of the fact that they were obliged to attend public service (see Shulhan Aruk, *Orah Hayyim*, 106. 1, and the comm. *ad loc.*). Incidentally, the author points out the exalted position accorded to women in the Jewish communal life and the development in the attitude of the law to women, as well as its influence on the social position of women. His imperative theme is the need in the present time to teach Jewish religion and literature to girls as well as to boys.

Basing himself on an expression used by the celebrant in an essay entitled 'Ein Vortrag über das Ritual des Pesach-Abends', Dr. J. Elbogen develops several ideas suggested there regarding the entrance and the exit of the Sabbath, in accordance with Talmudic sources. The entrance of the Sabbath was announced by the city official (Hazzan, חזן דמתא = חזן קרית) by

means of the blowing of a trumpet, the various signals of which indicated different steps in the approach and sanctification of the day. There was apparently no public worship in the synagogue on Friday nights in Tannaitic times, and it is very likely that there was none also on any other evening of the week. About the time of sunset the members of the household united in the principal meal, when the *Kiddush* was recited. The going out of the Sabbath was also celebrated with a meal, at which *Hab-dalah* was recited. The author also shows the various changes in the customs attending upon these occasions that were introduced later by the Amoraim.

While adding but little that is new or original, Dr. Armin Perls gives a clear and lucid presentation of the place of *מנהג* in Talmudic law and its relation to *הלכה*. It is a popular study, couched in an attractive style, which will also be of service to the student because of the numerous references quoted in the notes.

Another popular article is that by August Wünsche on 'The Kiss in Talmud and Midrash'. The various forms of the kiss, as well as the occasions for it, are given and discussed in almost unnecessary detail. It is questionable whether in an article of this kind it is necessary to put in translation lengthy passages, interesting though they are, as are here given, on pp. 81, 83, 85, 86, &c.

'Bible Stories and Bible History' is the theme of Dr. M. Güdemann's contribution. The similarity in the German expressions 'Geschichte' and 'Geschichten' prompts the author to devote several pages to a discussion of a philological nature, showing the development in the meaning of words. The author then endeavours to establish the thesis that the narratives in the Bible in which the early legends are freely used are historical. The tone of the whole article is rather polemic, the author taking every opportunity to refute the modern critical theories. The Creation, the Flood, the destruction of Sodom and Gomorrah are legends older than the composition of the Bible, the Bible making use thereof for religious and moral ends. They are not later additions to the Bible, but necessary components of the

narratives of Bible history which the sacred chronicler used with critical acumen and discernment. Dr. Güdemann's plea for the superiority of the Jewish conception of religion is quite stirring, though it is doubtful whether it is in place in a collection of articles supposed to be of a purely scientific nature.

Dr. Israel Abrahams, in a popular vein, discusses 'The Nine Worthies' in literature and art, in which David, Joshua, and Judah the Maccabee are often included. These pictures frequently represent a pageant, and the heroes are made to address the public. The author points out the fine tolerance that prompted the inclusion of these characters by Christian artists and poets. It is just as likely that the medieval Christian regarded these heroes, as well as all the other heroes of the Old Testament, as his own.

The philosophic articles in this volume are from the pen of Jakob Guttman, who is now the undisputed authority on medieval Jewish philosophic literature, and his son Julius Guttman, who has also made a name for himself in the same branch of study and research. The former writes on the relationship between the philosophy of Maimonides and that of Saadya, showing that although Maimonides does not mention Saadya by name, as he refrains also from quoting the names of other Jewish thinkers that preceded him, he refers to Saadya in several places, both when disagreeing with him, especially when the latter follows the Kalam, and also when agreeing with him. This, as the author admits, was already noticed by Abrabanel, who said that Maimonides's *Moreh* contains many references to Saadya's *Emunot we-Deot*, although not so mentioned. The author then quotes several passages from Maimonides, where the references are plainly to Saadya, in some of which Maimonides corroborates Saadya's opinion and even endeavours to defend them.

An excellent summary of Judah Halevi's religious philosophy as contained in his *Kuzari* is given by Julius Guttman. The *Kuzari*, according to our author, is the expression of the religious soul of its author; Judah Halevi's confession of faith. The truth of religion rests not on the basis of any philosophic speculation,

but on the inner conviction of the believer. We get to the most sacred ideals of the human soul not through the outward and frequently unreliable method of logic, but through the inner and immediate convictions of the human conscience, which are always certain. History corroborates the idea of God's providence over the individual and over the nation. Of course, Judah Halevi entertained no doubt regarding the absolute veracity of the narratives of the Bible, and thus could adduce them as proof positive of God's providence. The author then proceeds to analyse the Kuzari in the light of these fundamental ideas, and in the summary (pp. 355-8) he endeavours to show the relation of Judah Halevi's religious philosophy to the more modern religious philosophy of Kant and Schleiermacher.

The purpose and underlying principles of Jewish education are discussed with much religious fervour by Dr. L. Knoller. The final aim of Jewish education is sanctification of life, which is defined to be a kind of 'imitatio dei'. This was the aim which the Bible holds out for the whole nation of Israel, and this should also be the aim in the education of the individual Jew. Numerous examples from Biblical law support this assertion. The Torah is the guide that leads to holiness. By observing its precepts, one will attain to sanctification of life. The article, however, is too vague and general. The author fails to explain the application of these principles to modern Jewish education and entirely overlooks the national side of Jewish education, which is, perhaps, the more prominent in the Bible, and which may now need new emphasis.

Among the manuscripts published here for the first time, the contribution of Dr. Alexander Marx will probably be regarded as the most important. Dr. Marx presents five hitherto unpublished versions of what he regards to be parts of the *Seder Tannaim we-Amoraim*, the oldest attempt at a methodology of the Talmud. The text of this work has come down to us in a number of different versions, differing from each other widely. These five versions also present a considerable number of variations from the published text, and will be an invaluable

aid to a future edition of the work. While making no attempt at an exhaustive study of the text, Dr. Marx adds a number of suggestive notes and corrections.

Dr. A. Freimann gives the full text of the פסקי אור זרוע on Shebuot from a manuscript in the British Museum which contains the פסקים to Nezikin. The other parts were published before by Wilhelm Posen, and the פסקים to Shebuot are given here for the first time with some reference notes by the editor.

Early Midrashic literature is further enriched by the contribution of Dr. S. Schechter. He publishes a fragment of a Mechilta to Deuteronomy, which he identifies as being of a piece with another fragment which he made public some years ago in *JQR*, vol. XV, and which was later incorporated by Hoffmann in his edition of the Midrash Tannaim. This fragment contains comments on Deut. 11. 32 and 12. 5, 6, and presents several interesting points to which the editor calls attention in his notes.

I. D. Markon publishes several fragments of the Mishnah with the Babylonian superlinear vocalization. The text itself presents quite a few variations, which the editor carefully notes. The manuscript comes from the Imperial Library of St. Petersburg, from which several other fragments were published before in *הקדם*, vol. I. The article is accompanied by five photographic reproductions of the manuscript.

The twenty-fourth chapter and part of the twenty-fifth chapter of Abraham ben Moses Maimonides כתאב כפאיה אלעאברין are given with a Hebrew translation and several notes by Dr. S. Eppenstein. The editor does not deem it necessary to preface his work with a few remarks as to whence he obtained the manuscript and whether this was all that he found. He does not even refer to the fact that an attempt at a translation into Hebrew, of at least the first paragraph of this manuscript was made by B. Goldberg in his introduction to his edition of מעשה נסים (Paris, 1866). It would have greatly enhanced the value of this contribution if the author had added some introductory remarks concerning this work of Abraham Maimonides, which was probably the most extensive book that he wrote.

Dr. Israel Friedlander presents a lengthy fragment from the Schechter-Taylor Collection of the Genizah which Dr. Schechter believed to be part of the ס' הפקדון of Saadya. This assumption Dr. Friedlander accepts in face of a very serious objection noted in his introduction. The Arabic text is given in full and is provided by the editor with a Hebrew translation and with a number of illuminating notes.

Five Genizah fragments form the subject of Dr. J. Krenzel's contribution. The first is a Mishnah fragment of two leaves covering parts of Tractate Shabbat, and offering several interesting variations from the accepted text which the author discusses in detail. The second is a fragment of Mishnah Abot which agrees in the main with Lowe's edition of the Mishnah. The other three fragments, containing parts of Maimonides's Mishneh Torah, of Rashi's Commentary on the Pentateuch, and of the Pesikta Rabbati, are not given, but merely indicated, and the variants noted.

The variations in the customs of the Babylonian and Palestinian Jews are given in a manuscript which is now in the Munich State Library, and is published here by J. Finkelscherer. The editor carefully compares in his notes this manuscript with Müller's edition of הלוק מנהגים and other sources and indicates the variations in his notes.

Dr. M. Brann brings to light a memorial prayer which was composed by a Hebrew teacher, Alexander Gutkind, in 1656, and which was recited in the synagogue of Schneidemühl up to the beginning of the last century. Steintal refers to this prayer in the memoirs of his youth, but the text was entirely lost and was only recently discovered in a Machsor by Birnbaum, cantor in Königsberg. The prayer commemorates an attack upon the town of Schneidemühl in 1656, by the Swedes and the Poles, when thirty-three Jews were killed. Dr. Brann supplies the historical data regarding the unfortunate event, basing himself mainly on the ס' הזכרונות of the Posen Jewish community.

Heimann Arnheim's autobiography, which is here published for the first time by Dr. Max Grunwald, is an interesting

document, describing the wanderings and struggles of the poor student in Germany at the beginning of the nineteenth century. Arnheim wrote his autobiography when he was thirty-seven years of age (1833). His experiences are narrated in vivid and good Hebrew style, interspersed with some verses. The manuscript is now in the possession of the Gesellschaft für Jüdische Volkskunde in Hamburg.

Some years ago E. Baneth edited the Arabic text of Maimonides's commentary on *Pirke Abot*. In accordance with this text, the editor finds a number of errors in the printed edition of Judah ibn Tibbon's translation of the same. Baneth places here, in parallel columns, the accepted text of the Vilna edition and the improved reading, in accordance with the Arabic original, so that one may see at a glance the differences between the two. Since, however, most of the differences are only a matter of phraseology, it is questionable whether *מעוה* was the proper word chosen to head the column of the quotations from the printed text. However, many of these corrections certainly help toward a clearer understanding of the text and may well be incorporated into a future edition of Maimonides's commentary on *Abot*.

In a discussion of the commentary on the tenth chapter of *Pesaḥim* attributed to Rashi, Max Dienemann leaves it doubtful whether Rashbam is an amplification of Rashi, or Rashi an excerpt from Rashbam. The many quotations from Rashi found in Rashbam may indicate that the latter had before him some notes from Rashi which the great commentator left in an unfinished form. This may also throw some light on the method which Rashi followed in preparing his commentaries.

The commentary on *Midrash Rabba*, attributed in many editions to Rashi, has long been regarded as spurious, although the real authorship of this commentary has not been established with certainty. Indeed, the commentary, as now published, is admittedly a combination of at least two works, as is explained by the editor of this commentary, Abraham ben Gedaliah ben Asher, in his introduction to the Venice edition of 1567-8. Dr. Theodor, who has made the study of the *Midrash Rabba* his specialty, takes

up anew in a lengthy contribution the discussion of the authorship of these two commentaries. He conjectures that the author of the first commentary was a disciple of R. Meir b. Isaac who came to Worms or Mayence from Italy. This view is opposed to the suggestion of A. Epstein in Berliner's *Magazin*, vol. XIV, and elsewhere, and to the opinion of other students.

Shalom Albeck, who is now engaged on a critical edition of the *Sefer ha-Eshkol*, the first part of which has already been published, contributes an illuminating article on the works of Judah b. Barzilai, and the use made of his writings by later codifiers. Our author is of the opinion that Abraham b. Isaac of Narbona's *Sefer ha-Eshkol* is nothing else but an abbreviated edition of one of the works of Judah b. Barzilai, and he supports his contention by weighty arguments. He also endeavours to show that the *Sefer ha-Orah* (which he reads 'ha-Oreh' = The Gleaner), recently edited by the late S. Buber and attributed to the school of Rashi, as well as several responsa collections, are based on or form excerpts from the works of the Barcelona Rabbi. The fact that a number of compendia by Judah b. Barzilai are known to have existed and are frequently quoted makes our author's theory quite plausible. Of course, he could make use only of the few published fragments, especially the *Sefer ha-Ittim*, edited by Halberstamm, for the purposes of comparison, but his arguments are so forcible that we should not be surprised if they should be more fully corroborated by additional works of that author that may be found in the future.

II

THE COHEN 'FESTSCHRIFT'

Judaica. Festschrift zu HERMANN COHENS siebzigstem Geburtstage: Berlin, 1912. pp. 721.

In the short period since emancipation was granted in most civilized lands, the Jews have contributed more than their share to the intellectual advancement of humanity. Many of them

have risen to great prominence in the various branches of art, science, and philosophy, and some have become leaders of thought and action in their favourite domains. Few of these, however, have brought back their newly gained experiences and knowledge to enrich the specific branches of Jewish thought and scholarship with their investigations. They permitted themselves to become entirely dominated by their new loves, remaining indifferent to every other demand of life. Some of them went so far as to renounce publicly their affiliation with Judaism, and consciously severed the bonds that united them with their brethren. There have, however, been a few who remained loyal to their early training and steadfast in their affection for the spring whence they drank their first draughts of culture and enlightenment. These few, after having established their reputation in the outside world, some of them becoming recognized masters in their chosen fields, came back with an extended vision and with a broadened standpoint, and applied these in an interpretation of Jewish ideals and Jewish beliefs. To these few chosen spirits Judaism and the Jews owe a great debt of gratitude, not only because of the tremendous influence their attitude has exerted upon the outside world as well as upon their own wavering brethren, but also because of the new values they have given to the old truths, which are so dear to every Jewish heart and so essential in the preservation of Judaism in the changed environment of the present.

Professor Hermann Cohen is one of the few distinguished sons of Israel, who, while enjoying a most enviable reputation in the domain of philosophy, still found time and energy to enrich Jewish thought and Jewish learning by his independent and thorough investigations. When still a young man, he achieved great prominence as a profound student of Kant and was soon recognized as the ablest exponent of the neo-Kantian school. During the many years of his occupancy of the chair of philosophy in the University of Marburg, that town has been the Mecca for many a young student who has been attracted by his wonderful intellect and his clear reasoning. He became

the leader among his peers in the intellectual circles of Germany, and later his fame spread far beyond the borders of his native land. His works are recognized as standards in the domain of philosophic thought, and some of them have enjoyed even a hearty popular reception. The inveterate prejudice against Jews in German scholarly circles was forgotten in his case and, for a time, Cohen was the only Jew occupying a professorial chair in a German University. In a history of modern philosophy, the chronicler will have to determine exactly to what extent Cohen's mode of thought was influenced by his early Jewish training and his extensive knowledge of Jewish sources (see Klatzkin in *Haschiloah*, XXIX, 1 ff.). Students of Jewish history, however, are especially conscious of the great debt they owe to Cohen for his studies in Judaism, to which he brings his acute mind and his extensive knowledge to elucidate prophetic and Rabbinic thought in modern phraseology. On the occasion of his seventieth birthday anniversary, it was felt by all Jewish scholars that this was an opportune moment to show their appreciation of his endeavours, in a distinct form, whatever others who admire his contributions to general philosophic thought might do to commemorate the occasion. This general feeling of appreciation and gratitude found its expression in the present volume, a lasting monument erected by a grateful band of scholars.

The forty-three articles included in this volume deal with a variety of subjects in the domain of Jewish scholarship. As may be expected, studies in abstract thought and speculation predominate here, being more in harmony with the life-work of the celebrant. The editors (Elbogen, Kellermann, and Mittwoch) have done their work exceedingly well, and the publishers saved neither expense nor trouble to make the book a most creditable production from every point of view. With the exception of two articles in English and one in Italian, all the articles are written in German, although the contributors include also several American scholars.

The book opens with an article by Max Wiener on the History of the Revelation Idea. The author draws a sharp distinction

between the conception of revelation prevalent in Biblical times and that generally accepted in post-Biblical times. The prophet believed himself to be the messenger of God. He heard God's message and he saw visions. This was indeed miraculous, but in an age of miracles it was not regarded strange. It became part of the very idea of God that He revealed Himself to the few chosen spirits of the nation. Revelation was regarded as a great boon to the nation, while its absence was looked upon as a punishment. The essence of revelation was accepted without question, although later it became necessary to distinguish different kinds of revelation and to determine the true from the false (Deut. 13. 2-6; 18. 18 ff.). In post-Biblical times revelation was accepted as an historical fact, and it was not until the middle ages, when rational investigation was applied to the study of religion, that the problem became perplexing. The Jewish philosophers of the middle ages, according to our author, entirely failed in this instance, when they endeavoured to determine the nature of revelation and thus remove it from the realm of the transcendental and miraculous.

More strongly worded is the criticism of Dr. Lewkowitz of Maimonides's theory of prophecy. Strongly influenced by Greek thought, Maimonides regards the intellect as the most exalted power of the soul, and the prophet becomes with him a speculative philosopher, who is urged to transmit his thoughts to the public by the divine will, the same will that urges also the philosopher to write down his thoughts in a book. Maimonides, according to our author, entirely overlooks the strong ethical consciousness, the deep emotions, and the consuming passion for righteousness that actuate the prophet's being. His attempt, therefore, to reconcile the prevalent notion of the prophet with his own rationalistic point of view is regarded by our author as a failure.

Germane to the same subject, although treated from a different point of view, is Hermann Vogelstein's study of the terms Torah, Prophets, and Wise Men in the development of the religious history of Israel. While we are certain of the existence

of priests and prophets, as distinct classes in ancient Israel, although their respective functions have by no means been definitely determined, we are not so certain of the existence of the **חכם** as a separate class, and we are still more uncertain as to the exact functions of this class. Proceeding on the theory that these three classes actually existed in ancient Israel, each with defined functions and duties, our author endeavours to show how **תורה** was first applied mainly to the ritual decisions rendered by the priests, and how it was only after the promulgation of the book of Deuteronomy that the term was made to include also the moral law. The struggle between priest and prophet, which continued for a long period, caused this combination of the two ideals for which each respectively stood, in the term **Torah**. The third category embraced the wise men, the educated classes, from which were selected the rulers and officers, both military and civil. It was a general term, including the notions of **Rosh**, **Shofet**, **Sar**, &c.

Vogelstein then proceeds to demonstrate that the judicial and administrative powers were distinct and separate, and both were distinguished from the priestly function which had to do mainly with the decision of ritual questions. His interpretation of Deut. 17. 8 ff. is not convincing. He has in consequence to regard the word **הכהנים** in 19. 17 as a gloss. What will he do with the passage in Deut. 21. 5, where **ריב**, which can only mean a civil case, is decided by the 'Priests the sons of Levi'? In this connexion, Judge Sulzberger's identification of the **כהנים** with the delegates of the federal government, as distinguished from the 'zikhne ha-'ir', the local or cantonal officers, is more convincing ('Polity of Ancient Hebrews,' *JQR.*, new series, III, 50 ff.). It is altogether a hazardous task to seek for a definite division in the functions of the various departments of government in ancient times, since there was no doubt a great deal of overlapping of authority.

Our author then takes us further into the development of the meaning of these terms in exilic and post-exilic times, and shows how **תורה** came to mean the whole of the Law, and how **חכם**

came to denote especially the student of the religious law. The results of the higher criticism of the Bible are accepted by him as final, and he follows them implicitly. Thus the great emphasis laid by him on the revolution wrought in the religious life of ancient Israel by the promulgation of the book of Deuteronomy will be regarded overdrawn by many more conservative students. The subject, however, is lucidly presented and a number of suggestive ideas are brought out in the course of the article (comp. Kent, *The Great Teachers of Judaism and Christianity*, for a more extensive treatment of the subject).

The first place in this collection should really have been given to Kellermann's exposition of Cohen's philosophy, in so far as it provided Judaism with a philosophic basis. In a lucid, almost popular style, the author shows how Kant's philosophy received a new interpretation and a firmer basis through Cohen's investigations, frustrating the attempts of Hegel and his followers to resuscitate Aristotelianism in modern days. While Cohen also gives a new meaning to Kant's standpoint regarding Logic, he becomes the master rather than the follower in his interpretation of the 'Ethics of the Pure Will'. More than this, by making the well-being of the state the end of moral conduct, Cohen identifies the philosophic notion of ethics with the notion of the Hebrew prophets. The idea of God is the spur to the realization of the laws of states. History is merely the field of action, showing the constant progress of the good. The victory of the good becomes possible only through the belief in the power of the good, which is identical with the belief in God. From this follows the eternal idealization of the present through a messianic future, the underlying thought of almost all the prophecies. It is especially in this respect that Judaism owes so much to Cohen for placing it on the sound foundation of philosophic thought.

The claim made by Lazarus that the autonomy of ethics is a principle of the Jewish religion has been refuted by Cohen in several places in his writings. No religious system would recognize moral conduct as autonomous. In Judaism particularly, ethical laws are regarded to be possessed of the same divine character as

are the ceremonial and other laws. They are all prescribed by God. Felix Perles, however, finds several sayings in the haggadic portion of Rabbinic literature and even in the Pseudepigrapha that point to the notion of the autonomy of the moral law as having existed among Jews. These references, which appear contradictory to the underlying principles of Judaism, are, according to Perles, borrowed from the Greeks and were introduced into the Jewish world by Philo, in whose writings he finds several passages which show his belief in the autonomy of ethics.

On closer examination of the references here quoted the difficulty does not appear to be so great as to make it necessary to construct a new theory regarding their origin. In fact, in all these passages, with the exception of one, ethical laws are not singled out, but the whole Torah is expressly mentioned. And even in the passage in *Sifre* to Lev. 18. 4, where the laws enumerated are mainly ethical, which forms the basis for Lazarus's thesis, it is not necessary to assume that the author had the idea of autonomy in mind. The idea seems to be rather that these laws are so self-evident and so essential that even if they had not been written it would be necessary (ברִינ) to write them down. The passage which conveys the idea that one who observes the Law is as if he had made it, may easily be interpreted in the sense of possession, as given in the case of the student of the Law (Raba in *Kiddushin* 32 b, *Abodah Zarah* 19 a based on Ps. 1. 2). The statement regarding Abraham's observance of the Law is already explained by our author himself in the sense that the revelation was made to him. In general, the idea conveyed by these passages is rather to emphasize the naturalness of the Law and its simplicity, but by no means suggesting the idea of autonomy.

The interest in Philo on the part of Jewish students has been considerably heightened recently, probably due to the excellent edition of Philo's works, being issued by Leopold Cohn. We thus find several contributions, dealing with Philo's philosophy, in this book. Leopold Cohn himself contributes a severe criticism

of a work by Eduard Schwartz, which deals with this subject. Schwartz, in discussing the Gospel of John, endeavours to show the close connexion between that book and the Jewish theology of the time. He denies the influence of Greek philosophy upon the Jews and goes still further, maintaining that Philo's works are nothing but an elaboration of the Rabbinic thought of that period and had very little in common with Hellenistic philosophy. He designates Philo as 'Rabbi', and speaks of him as 'that superficial chatterer' or in other such slighting terms. Cohn takes up his arguments one by one and shows conclusively that while Philo was no doubt strongly influenced by the Jewish mode of thought and belief, his writings were nothing else but an endeavour to harmonize the Bible or rather the Pentateuch with Greek philosophy. He takes up for special consideration Philo's teaching about the Logos, and shows how impossible that would have been from a purely Jewish point of view, and especially from the viewpoint of the Pentateuch with which alone Philo was familiar. This manner of reasoning was common only among the Alexandrian Jews who came in close contact with the neo-Platonists and the Stoics, and Philo merely put these prevalent interpretations and endeavours at harmonizing Biblical thought with the thoughts of these Hellenists in a literary form.

In popular form, and still characterized by thoroughness and depth, J. Horowitz gives a *résumé* of Philo's philosophy and his attitude to Judaism. The title ('Die Entwicklung des Alexandrinischen Judentums unter dem Einflusse Philos') is rather misleading, the greater part of the essay being devoted to Philo's mode of thought and the influences that acted in moulding it, and but little space being given to the development of Alexandrian Judaism, except by way of introduction. Perhaps the most interesting part of this article is where the attempt is made to show the relationship between Philo's philosophy and the theology of the Kabbalah and the religious philosophy of the rational school of the middle ages, of which Maimonides is the most illustrious representative. It is true that of the two phases of religious emotion, the ethical and the metaphysical, the former was given

greatest prominence in Judaism and was allowed to dominate Jewish life and thought for centuries. Still, the metaphysical and mystical, which find such prominent expression in Philo, were not entirely neglected in Judaism and found their expression in the Kabbalah and in the literature of the medieval religious philosophers. While the latter often introduced foreign elements in Judaism, which may have been fraught with the greatest dangers to the maintenance of the purity of the Jewish belief, they also helped to enrich the storehouse of Jewish lore and to broaden the horizon of Jewish thinkers of all ages.

Attempts have been made by several writers to show the influence of Philo's theory of the Logos on such expressions as *מִימְרָא*, *יְקָרָא*, and *שְׂכִינְתָא* found in Rabbinic literature. One who is familiar with the spirit of that literature will not entertain such a possibility. Still, no less an authority than Zeller takes that standpoint. L. Treitel, therefore, without introducing anything new or original, undertakes to show the real meaning of these terms. They were never intended to indicate the idea of another power in the world, an emanation from God, but were used in order to avoid anthropomorphisms in the translation of the Bible. Even the expressions *מֶלֶךְ הָרִין* and *מֶלֶךְ הָרַחֲמִים* do not indicate powers outside of God, but rather attributes of God, resting in His being. It is true that in the later liturgy the *מֶלֶךְ הָרַחֲמִים* is appealed to to intercede with God in our behalf, but this is obviously due to Kabbalistic influence. Nor can the angels in any way be identified with Philo's *λόγοι* or *δυνάμεις*. The former are poetic creatures, while the latter are parts of a theological system. Our author therefore reaches the conclusion that Philo's doctrine of intermediaries had not found an echo in the Palestinian schools.

J. Heinemann endeavours to show that the laws of oaths and vows found in Philo's writings betray a knowledge of the Jewish popular point of view regarding these subjects. It is true that Philo follows closely the Stoic doctrine regarding oaths, his very definition of the term being of Stoic origin. Still, his commendation of pious oaths shows the influence of the Jewish attitude.

When, however, the Rabbinic law differs from the Hellenic notion, he is inclined to follow the latter. As to the Rabbinic discouragement of any kind of vow, a view which, according to our author, was not shared by the mass of the people, comp. *Ḥullin* 2 b, *Tosafot*, s.v. *לֹא*, and *Nedarim* 9 b.

The relationship between the Stoic philosophy and Rabbinic teachings has not yet been closely investigated, except in a few popular collections of parallel sayings and maxims drawn from these two sources. Dr. Bergmann attempts here a more scientific study of the subject. He first shows the possibility of an interchange of thought between the Stoics and the Rabbis, since the former frequently visited Palestine and some of them were even permanently settled there. The author then proceeds to show the similarity in the teachings of these two schools in various ethical and religious subjects, which he classifies under twenty-six headings. There are also quite a number of instances wherein Stoic and Jewish thought differ from each other considerably. These differences are due primarily to the essential differences in the mode of thought of these two schools. Stoic philosophy lacks the warmth of religion that permeates Rabbinic teachings; its religion is pantheistic; its ethics is based on intellectual sanction rather than on divine authority; its notions of sin, of charity, of pain are radically different from those held by the Jewish teachers.

That the sceptical philosophy of the Greeks was not entirely unknown to the Jewish medieval philosophers is shown by Horovitz (Breslau) in a well-written contribution. References to this mode of thought are found in the writings of Maimonides, Halevi, and especially Joseph ibn Šaddīq, although they had to obtain their information from secondary, often faulty sources. Saadya, however, shows a thorough familiarity with this special phase of Greek philosophy. From his efforts to refute the claims of Greek scepticism our author infers that this mode of thought had its devotees among the Jews of Saadya's time, against whom his arguments are directed. That there were among the Jews such as inclined to sceptical thought is also evident from references in the works of Ibn Ḥazm, who mentions one Jewish physician by name.

Medieval Jewish philosophy is represented by a few short studies. Jacob Guttman, who has shown in several other places that Maimonides was familiar with the writings of the Jewish thinkers who preceded him, although he does not mention them by name, proceeds here to show the influence of Abraham ibn Daud on Maimonides's philosophy. Abraham ibn Daud, the first Jewish Aristotelian, who made it his life-work to harmonize the teachings of Judaism with those of Aristotle and his Arabic followers, had even a more positive influence on Maimonides than Saadya. Our author even goes to the extent of suggesting that the very form of Maimonides's *Moreh*, its general divisions and arrangement follow closely to a large extent those of ibn Daud's work. Guttman takes up several characteristic topics in the works of both and shows their similarity of construction and argumentation, even of the proofs and quotations. The article is preceded by a glowing tribute to the celebrant and to his work in the field of Jewish philosophic investigation.

In a short essay Hartwig Hirschfeld endeavours to show that the purpose of Saadya in all his works, including also his *Kitab al-Amanat*, was to combat Karaism, which was a great menace to Judaism at that time, because of the many adherents it attracted from the great mass of the Jews. He quotes one example, the attitude to prophecy as expressed by Jefeth the Karaite, against which Saadya evidently directs his criticism in the very introduction to his *Kitab al-Amanat*, showing thereby the tendency of the work to be a guide to those Jews who were attracted by Karaite teachings.

A congratulatory letter sent to Maimonides by one of his admirers forms the subject of Israel Friedlander's contribution. The only two occasions that may fit this document are Maimonides's appointment as court physician and his appointment as Nagid of the Jewish community. Our author inclines to the belief that this letter was written on the occasion of the latter event, and from internal evidence he infers that the writer was no other than Maimonides's favourite pupil, Joseph ibn Akinin. This identification lends additional interest to the document,

which is given in the Arabic original with a German translation.

Another Hebrew translation of Maimonides's מלכות ההגיון, which would throw light on the rather obscure current rendering by Moses ibn Tibbon, will be welcomed by students of Maimonides as well as by students of logic. M. Chamitzer was fortunate in obtaining a copy of a translation made by Aḥitub of Palermo, who lived in the thirteenth century and who is but little known to Jewish history. The text is given in full, in the beautiful Hebrew type, copied from the type used by Abraham Conat of Mantua, in the latter part of the fifteenth century, in the printing of several Hebrew books, notably Gersonides's commentary on the Pentateuch. The editor presents also a few illuminating notes, but reserves a more thorough study of the manuscript and a comparison between it and the fragments of the original Arabic text extant and the current Hebrew translation for some future time.

A close study of the recently published commentaries on the Bible of Joseph ibn Kaspi, edited by the late Isaac Last, revealed to the late lamented Wilhelm Bacher a number of exceedingly interesting points, which throw much light on the character of this fourteenth-century Jewish philosopher. Ibn Kaspi was a close follower of Maimonides, and in some respects went even further than his teacher in his rational interpretation of Scriptures. From several of his comments we see that he studied his Bible from a literary point of view, regarded the prophets as preachers, who spoke to the people as occasion demanded and then collected their sermons, without regard to their chronological order, in book form. The prophetic books are the best commentary on the Torah. The Torah avoids philosophic terms and ideas, because it was primarily intended as a guide-book for the great mass of the people who are not familiar with philosophic terminology. Its language is simple, so that all people may understand it. The text of the Torah is perfect and allows of no emendation or correction. Special attention is directed towards Ibn Kaspi's declaration regarding the close relationship between man and

the other living creatures, including plants. All belong to the same family; men, animals, and plants are all children of the same Father who called them into being. This is indeed a remarkable expression, coming as it does from the mouth of a medieval thinker.

Henry Malter discusses several Hebrew terms for nature used by medieval Jewish authors. The term *יצירה* is frequently used not in its original sense as creation or formation, but in the sense of the nature of man and his disposition, and the plural frequently indicates the various qualities that go to make up one's nature.

Various writers have attempted to find the sources of the Spinozistic philosophy in the Jewish religious philosophy of the Middle Ages, in the philosophy of the Renaissance, or in the teachings of the Christian scholastics. Since all these philosophies are based on the neo-Platonic interpretation of philosophy of Aristotle, so that even those who differed from him could not entirely escape Aristotle's influence, it is necessary to establish the relationship between Spinoza and Aristotle, in order to appreciate the course of his thoughts more fully. This is done here by Julius Guttmann, who also gives an excellent *résumé* of the leading ideas in Spinoza's philosophy.

Jewish ethics and theology are represented by several articles. Kaufmann Kohler takes up anew an investigation of the 'golden rule' as found in Leviticus and its relation to the negative form found in Rabbinic literature and in the New Testament. Beginning with the consideration of the term *rea'*, which he regards as more inclusive than does Cohen in his *Ethik des reinen Willens*, making it include all men, Kohler proceeds to show that the idea was original neither with Jesus nor with Hillel. It is found expressed in the Book of Tobit and is especially emphasized in the Didaskalia and in the Didache. These two works, which are now generally admitted to be of Jewish origin, although in their present form they bear signs of Christian interpolations, contain these ideas in their groundworks. The argument is greatly strengthened by copious quotations from Rabbinic literature.

The high position accorded to manual labour in Bible and

Talmud is again emphasized here by S. Kalischer, in a popular essay. To work was as much following in the ways of God as to be holy. We are to be holy because God is holy ; we are to work six days in the week because God also worked six days. Labour is a duty, part of the life of man, and not a curse which he should shun. Idleness is condemned in the strongest terms. Our author also discusses in detail the various branches of industry which were followed by the ancient Israelites.

Forming the central idea in Jewish life and thought since the remotest antiquity, it was but natural that the messianic idea should find prominent expression in the Jewish prayer-book. Ismar Elbogen, in a short study, shows how this idea, both in its universalistic and national aspects, is expressed in almost all the prayers, whether designed for public or private use. He also points out how some of the early pre-destruction prayers were later modified to include the messianic hope. It is doubtful whether it was necessary for our author to assume the apologetic tone in this discussion. To pray for national regeneration and national well-being is natural and entirely appropriate and needs no apology. Such prayers do not preclude prayers for the realization of the larger, universalistic hope of the establishment of the kingdom of God upon earth. The two ideas are found side by side in the prophetic books of the Bible as well as in our liturgy. It is therefore unnecessary and not even quite true to say that the prayers for a natural rejuvenation are the result of the 'jüngere Eschatologie'.

A strong plea is made by S. Hochfeld for the creation of a practical theology of Judaism, which should include the subjects of homiletics, pedagogy, liturgy, and pastoral work (Seelsorge). The author lucidly presents the distinction between an historical, systematic, and practical theology, and shows that while in the former two branches a number of helpful works have been written, very little has thus far appeared in the domain of practical theology, which really means the application of theological ideas to present-day, actual life.

An illustration of the practical theology is given in the

following article by M. Levin, who endeavours to emphasize the leading ideas that should predominate in the modern Jewish sermon. The author enters upon a consideration of the elemental truths of Judaism and their application to present-day life, and offers several concrete suggestions as to the subjects which should be discussed from the modern Jewish pulpit and the manner in which these should be treated.

Biblical exegesis and criticism are but slightly represented in this volume. S. Maybaum's 'novel' interpretation of four Biblical passages will not appear as novel to many students of the Bible. In two of these he mentions the authority that preceded him in such interpretation. His explanation of Isa. i. 18-20 has been anticipated in Mendelssohn's German translation of the Bible, while his comment on the third commandment is far-fetched and his objection to the accepted translation is not very strong (see Biur, *ad loc.*).

In a strongly worded article, M. Steckelmacher draws a striking contrast between the attitude to the Psalms held by the earlier and later Christian exegetes. Luther, Delitzsch, Ewald, and Hupfeld could see only the sublime and the beautiful in these expressions of the human heart in its relation to the divine. Delitzsch's motto to his commentary is 'What the heart is to the human body, the Psalms are to the Bible', reminiscent of Judah Halevi's simile regarding Israel among the nations. On the other hand, modern Christian Bible students, like Duhm and Gunkel, can find in the Psalms only an arrogant nationalism, an exaltation of ritualism at the expense of pure morality, a seeking after worldly gain and material rewards. The author skilfully exposes the crass prejudices of these 'higher Anti-semites', and shows, as has been shown many times before, that learning and supposedly scientific investigation are no proof against inveterate prejudice, that even scholars cease being exact and scientific when personal feelings and subjective beliefs overmaster them. Whether such criticism will serve as a warning to others or not, it is well that the truth should be told, and told in unhesitating terms.

H. Flesch endeavours to establish the thesis that the accents in the Bible bear traces of the influence of the traditional interpretation of Scriptures. While he avoids the discussion of the mooted question as to the period when the accents were introduced, he intimates that they must have been established after the development of the traditional law. The danger of such assertions lies in the possibility of the cause and the result being contemporaneous, so that it is not possible to define which was the stimulus for the other. Neither the accents nor the traditional interpretation of the Bible came into existence at one particular time, although the actual writing down of both must be assigned to distinct periods. The proof that the accents sometimes contradict the traditional explanation and still no one of the commentators seems to resent it, is very weak and simply shows that the great commentators of the Bible entertained a more correct attitude toward the traditional interpretation than our author. It is generally conceded that the builders of Jewish tradition, whether in the domain of Halakah or Haggadah, did not intend their interpretation to replace the ordinary meaning of the Biblical passage, and consequently no resentment was felt when the accent, which is presumed to follow the literal meaning of the verse, did not agree with its traditional interpretation.

Nor is our author more convincing when he produces the individual cases on which his thesis is based. In Gen. 32. 11, even according to the traditional interpretation, קטנתי should be joined with what follows. The difficulty in Lev. 25. 20 is not removed by making the accent rest upon the interpretation given in Sifre, *ad loc.* According to our author's construction, בישנה השביעיה should be joined with what follows. It is questionable whether the difficult passage in Ezek. 44. 22 can be translated, even disregarding the accents, 'eine Witwe jedoch, die von einem Priester hinterlassen wurde, dürfen sie heiraten'. We should expect אשר היא אלמנה כהן rather than מכהן אלמנה. However, the accent, obviously in harmony with Targum and Kaddushin 78a, is not any more satisfying.

In a lengthy contribution, J. Horovitz deals in detail with

the so-called 'lex talionis' of the Bible. The article is mainly polemic in nature, the greater part of it being devoted to a refutation of the arguments of D. H. Müller in his 'Die Gesetze Hammurabis und die Mosaische Gesetzgebung'. J. Kohler, Harnack, and Eduard von Hartmann are also taken severely to task for their assumptions in dealing with the subject. Horovitz is well equipped for his battle, and his arguments are supported by the strong proofs of Jewish literature, in which he is entirely at home. The polemic and apologetic nature of the article, however, does not impair its scientific value. The author shows his wide learning and deep thinking especially in his notes, some of which are really independent studies. The main subject under discussion, the expression 'eye for eye, tooth for tooth, &c.', is treated in detail in a lengthy note on pp. 638-46, where it is compared with the old Arabic law and the Code of Hammurabi, and where also the development of the law in later Jewish legal history is given.

Adolf Schwartz, who has made the study of the hermeneutic laws underlying the reasoning of the Rabbis his specialty, has repeatedly emphasized that the Rabbinic mode of reasoning was in perfect harmony with the manner of reasoning displayed in the Bible, the system of logic developed by the Jews. The same laws governed the logic of the Rabbis as those of the Prophets, and even the form of expression is similar in both. That the *Kal wa-Homer* is found in the Bible has already been shown by an early tannaitic authority (Ber. R. 92, 7). Schwartz tries here to show the existence of the enthymeme, i.e. a syllogism in which one of the premises is suppressed, frequently met with in the Talmud, also in the Bible. He enumerates twelve cases of what he considers enthymeme, seven of which are found in Isaiah. Schwartz is gifted with a beautiful style and rich imagery of diction, which greatly enhance the value and interest of his contribution. He takes every opportunity to oppose the modern Bible critics in their emendations of the Biblical text, and frequently succeeds in presenting a striking and novel interpretation of the passage under consideration. Most novel, though

not entirely convincing, is his interpretation of the difficult passage in Amos 3. 12. His assumption that *באת מטה* and *דמשק ערש* are proper names, indicating the poorer sections of the city of Samaria, needs further corroboration and proof.

The assertion frequently made by modern Bible critics that Talmudic jurisprudence is rigorous and relentless, quite different from that of the Bible, which is founded on love and mercy, has, according to Max Eschelbacher, no foundation in fact. Fairness and equity were frequently appealed to by the Rabbis, not only when in conformity with the law, but even in opposition to it. Not only the Bible, but the Talmud also places righteousness higher than justice. The many regulations of the Rabbis 'for the good of the world', 'in order to maintain peace', and the many regulations based on a liberal interpretation of Deut. 6. 18, conclusively prove that the Rabbis were at no time the slaves of the relentless law, but exercised a sense of fairness and kindness in administering justice. As part of the same tendency our author properly mentions the principle of *לפנים מיצורת הדין*, which makes it obligatory upon one to adhere to the larger laws of morality, even though not demanded to do so by the strict letter of the law. The spirit that pervades the Bible in its legislative portion strongly influenced the Rabbis in their efforts to elaborate the law in accordance with this spirit.

N. A. Nobel contributes the first part of a study on the Jewish law of pledge. The author brings his knowledge of Roman law to bear on the subject and shows the difference between the two systems in the very conception of the idea of the pledge. While opinions in the Talmud vary as to the nature of the pledge, it appears from the author's analysis of the sources that it did not imply ownership on the part of the creditor, nor even the primary right to buy it, when the owner wishes to dispose of it.

The existence of popular idioms and sayings, maxims and legends in the Haggadic literature has been noted by many students of the Talmud. Philipp Bloch, however, attempts to show that these quotations were taken not from the current

idiom of the people of the time, but from books and collections of stories and proverbs which were prepared for popular reading. He takes up for detailed consideration the *Pesikta de R. Kahana*, and shows that the Aramaic sayings and stories found there are taken bodily by the compiler from such folk-books as were extant at the time and were probably found in the library of every academy. As an illustration, he presents in translation a lengthy quotation, dealing with the folk-stories connected with the name of R. Simeon b. Yohai and his son Eliezer. The fact that there is no mention of such books does not militate against this theory. Our author regards the recently found Ahikar story, the so-called Targum Sheni to Esther, and the stories regarding the destruction of the Jewish state found in *Giṭṭin* 55 b ff., as well as a number of fragmentary sections in other parts of the Haggadah, as belonging to this class of literature.

The many attempts to identify the term *Min* found so frequently in Rabbinic literature, have not been successful, for the simple reason that the term denoted all kinds of heretics. A. Büchler quotes at length several passages in which the term can have no reference to Jewish heretics, but only to heathen Christians or to other heathens who were familiar with the Bible. There was apparently a large number of such *Minim* in the various centres of Galilee during the second and third centuries. We find them especially in places where there were also academies, and they were in the habit of conducting controversies with the Rabbis. From the disputes in which they participated several of the underlying principles of their beliefs can be ascertained. It is interesting to note that several of these arguments are found also in the writings of Justin Martyr. It is admitted, however, that in many places where *Minim* are mentioned in the Talmud, Jewish heretics only are meant. Our author does not discuss the nature of the heresies of these *Minim*.

Immanuel Löw gives three more chapters of his treatise on the Aramaic names of amphibious animals, other chapters of the same work having appeared elsewhere. He takes up for detailed consideration the chameleon, the crocodile, under which the

interesting Leviathan legends are discussed, and also the turtle. His wonderful familiarity with Semitic as well as classic languages, and with their respective literatures, is shown here to great advantage.

Two important contributions included in this volume deal with the recently-discovered Aramaic papyri at Assuan. Eugen Mittwoch presents a most ingenious explanation of the historic background of the Elephantine documents relating to the rebuilding of the Temple at Jeb. His assumption that the priesthood in Jerusalem was antagonistic to the rebuilding of the Temple by the Jews in Elephantine, while the Samaritans were in favour of it, sounds exceedingly plausible and solves several difficulties which present themselves in the study of the three documents dealing with this subject. Bagoas compromised between the two contending parties, allowing the rebuilding of the Temple on the condition that only meal-offerings with the accompanying libations should be offered there, but no animal sacrifices. This explanation appears to offer the correct solution to the problems presented by these papyri.

Ludwig Blau takes up for detailed discussion some of the legal documents of the same collection, and shows the striking similarity between them and the demotic documents of Egypt as well as with those of Greek origin. Incidentally he points out how these forms have been preserved also in Rabbinic literature, although to this phase of the subject he had devoted a special study which appeared elsewhere. Blau further shows the similarity between the *synggraphylax* of the Greeks in Alexandria and the earlier Aramaic form of the same document. In connexion with this he explains the incident narrated in Jer. 32, which apparently contains an example of the use of this form of document, considering the *התום* and the *גלוי* as really one document made in the manner of the *συγγραφοφύλαξ*, and further shows its connexion with the *גט מקושר* of the Talmud. Our author sees the difficulty in the phrase *הספרים האלה* in ver. 14, which apparently indicates the existence of two distinct documents. It is more likely that the incident in Jeremiah describes a custom

that obtained in ancient Assyria where the document was enclosed in a clay case on the outside of which the main contents of the document were repeated (comp. Amram, *Leading Cases in the Bible*, pp. 177-84).

Later Jewish history is enriched by several valuable contributions. Siegmund Salfeld brings together several extremely interesting documents dealing with the efforts of the last Duke of Mayence, Karl Joseph von Erthal (1774-1802), to improve the miserable condition of his Jewish subjects. Especially interesting are the documents relating to the attempts made then to improve the educational facilities in the Ghetto and the apparently wholehearted devotion of the Duke to the cause of Jewish emancipation.

Quoting from the ordinances pertaining to the status of the Jews in Hessen Cassel during the sixteenth and seventeenth centuries, L. Munk throws much light upon the abject position of the Jews in that province. The humiliating orders compelling the Jews to listen to Christian sermons preached in their behalf, the restrictions placed upon their mode of worship, the many taxes and tolls exacted from them, must have made their lives most miserable. Fortunately, many of these ordinances were apparently never carried out in practice and remained a dead letter, very much like the equal rights enjoyed by Jews to-day in some countries of Europe—on paper.

Some letters and poems written by Wilhelm Wolfsohn to Berthold Auerbach form the subject of Ludwig Geiger's contribution. These letters contain very little of distinctly Jewish interest, and their author was only an indifferent Jew, though he remained loyal to his descent in face of many temptations. Wolfsohn was a fluent writer and speaker and enjoyed considerable prominence in his days, although now he is almost entirely forgotten. Geiger gave an extensive account of his life and activities in the *Jahrb. f. jüd. Gesch. u. Lit.*, 1911, and these letters will serve as a supplement to that article.

The present writer regrets his inability to appreciate fully the value of the Italian contribution by Umberto Cassuto, because of his unfamiliarity with that language. Cassuto discusses the

quotation from the sermons of Giordano da Rivotto (1304), where references are made to the conversion to Christianity of a large number of Jews in Puglia. Güdemann denied the truth of this statement, but our author endeavours to show that there was a number of crypto-Jews in that district, who may have been the descendants of these early converts.

Of a more miscellaneous character is the pleasant *causerie* contributed by D. Simonsen, in which several interesting subjects, are entertainingly discussed. Apion's accusation that the Jews worshipped the head of an ass, the connexion of Ahasuerus with the Wandering Jew, the origin of the term Ashkenaz denoting Germany, and several other points are reviewed and, in some instances, novel comments and explanations are offered.

The Tobit drama, which was extensively presented during the sixteenth century in various parts of Europe, is shown by Israel Abrahams to have been derived, to a great extent, from the story as then current among the Jews. A version of this story is found in Joseph Zabara's *Sefer Sha'ashu'im*, recently edited anew by Israel Davidson, and the English version of this story is also given by Abrahams in his *Book of Delight and Other Papers*, pp. 43-6. Abrahams also shows in this essay that some of the foreign elements introduced in the drama are based on midrashic legends, current among Jews.

A. Freimann publishes for the first time, from a unique Vatican MS., Meshullam b. Kalonymos's polemic against the Karaites. This consists of nine paragraphs, dealing with Karaitic mistaken interpretations of Biblical passages. While these replies were known to many medieval authors, who refer to them, they have never been published in full. The editor has provided them with a brief introduction and some illuminating notes to the text.

Karl Kautsky's theory of the origin of Christianity, as laid down in his *Der Ursprung des Christentums* (Stuttgart, 1908), is analysed and criticized by Alphons J. Sussnitzki. While all the earlier writers on the subject seem to be interested mainly in the spiritual conditions, the moral struggles or the political changes that prevailed at the period under discussion, Kautsky

approaches his subject from the standpoint of historical materialism and seeks the origin of Christianity rather in the material and economic conditions that obtained then in Rome and in Judea. Indeed, he carries his premises a little too far, especially when he enunciates his novel and superficially attractive theory about the mercantile tendency of the early Jews being the stimulus for their conception of monotheism. As Sussnitzky points out here, using a phrase of Hermann Cohen, it is an extremely unsafe practice to make economic and material relations the causes of spiritual phenomena. The principal thesis presented by Kautsky, however, is novel and interesting and merits further investigation.

III

THE KOHLER 'FESTSCHRIFT'

Studies in Jewish Literature, issued in Honour of Professor KAUFMANN KOHLER, Ph.D., President of the Hebrew Union College, Cincinnati, Ohio, on the Occasion of his Seventieth Birthday, May 10, 1913. Berlin, 1913. pp. vi + 301. Portrait.

The appearance of a volume of scholarly contributions in honour of an American Jewish scholar is an event, the first of its kind, that will be welcomed with deep gratification by all lovers of Jewish learning. Although German by birth and early training, Dr. Kohler may rightly be claimed by the American Jewish public as their own. He arrived here when but a youth, and his activities as Rabbi and teacher have been exercised among the Jews of this land for more than forty years. As a religious reformer, he exerted a potent influence on the course of the development of this movement in Jewry, and as a scholar he has produced works that are of lasting value. He made the study of Jewish theology his specialty, and the volume which he published, dealing with this subject, is recognized as a standard work. His interest in Hellenic literature has resulted in numerous

contributions to periodical publications, and these are frequently quoted with respect by students. An exhaustive list of the literary labours of the celebrant is given in this volume (pp. 266–301) by Mr. Adolph S. Oko, Librarian of the Hebrew Union College. The compiler enumerates 512 items, adding explanatory notes wherever necessary. This number of articles, pamphlets, and books does not include the large number of articles Dr. Kohler contributed to the *Jewish Encyclopedia* (289) and the editorial work he did for that great work as well as for several periodicals.

This volume, published in his honour, bears testimony to the appreciation of his worth, not only by those immediately associated with him in his work, but also by men from abroad, who stand foremost in the domain of Jewish scholarship. It is somewhat different from other volumes of a similar character, inasmuch as the personal element is rather conspicuously brought to the front in this volume. An excellent photograph of the celebrant is introduced here as a frontispiece, and the first three articles deal with the personality of Dr. Kohler, his work in behalf of Reform Judaism, and a *résumé* of his most important literary contributions respectively. It is a great pity that the book is so full of misprints. This is probably due to the fact that it was printed abroad and the editors, David Philipson, David Neumark, and Julian Morgenstern, were anxious to have it ready for the time of the celebration, so that the proof-reading was neglected.

The volume opens with a biographical sketch of the celebrant, written by his son, Max J. Kohler. While the writer apparently endeavours to give merely the facts in the life of his father, the article is naturally and properly coloured by filial piety and pride. The second article, 'Kaufmann Kohler as Reformer', is somewhat less subjective, dealing as it does with ideas and theories. Dr. Philipson, the writer of this article, in a systematic and orderly manner, presents the views of the celebrant on several of the leading thoughts underlying Reform Judaism, giving, wherever possible, his very words, culled from the numerous articles, sermons, and books that he wrote on this subject. Naturally,

it would be the height of impropriety for one to express disagreements or offer criticisms in such an article. Dr. Philipson goes a step further. He even tries to reconcile conflicting ideas expressed by Kohler at various periods in his career on some important questions of Jewish life and practice. The same is true also of Dr. Neumark's characterization of Kohler's *Systematic Theology*. While lacking in perspicacity and, at times, also faulty in diction, this article contains a very good summary of the book, the most important individual work that Dr. Kohler has thus far produced in the domain of Jewish scholarship.

Biblical study and investigation are represented by five short articles. Prof. Bittenwieser endeavours to show the importance of Zachariah (why not Zechariah?) as a prophet. He complains of the fact that Zechariah's prophetic greatness has been underrated by modern Bible students and points out the high level of spirituality in his prophecies.

'The Exodus and the Bible' is the title of Prof. Englander's contribution. In it the author seeks to establish the tremendous influence that the memory of the Exodus period had on the development of Judaism during Biblical times. He shows how new meaning was given to various old institutions by connecting them with the events of the Exodus; how the Exodus was used by the prophets to serve as a source of hope and faith in the mercy of God and His readiness to help Israel in times of trouble. At the end of the article the author gives two lists of passages—one of passages in the Exodus narrative, in which ethical and religious laws are enforced by referring them to the Exodus, and another of passages in the other books of the Bible, which contain references to the Exodus narrative.

Prof. Margolis endeavours to solve the puzzling translation of the Septuagint of the phrase in Joshua 4. 4, אֲשֶׁר הָכִין מִבְּנֵי יִשְׂרָאֵל. The LXX rendering τῶν ἐνδούξων for הָכִין, while admittedly paraphrastic, is still regarded by the author to have a basis in the text. In his search, Dr. Margolis finds that while הָכִין in the Hebrew text undoubtedly means 'prepared', referring to ver. 2, it may

also mean 'established' and have reference to establishing in rule or government. The translator had in mind the twelve princes of the tribes, men of honour and position, and took the word **הַבִּין** to include this additional significance. The second alternative presented here that the translator had in mind the word **בֵּן**, meaning rank or position (cf. Gen. 40. 13; 41. 13), is less likely, while the third alternative offered by the author that the translation has reference to **בְּנֵה** is discarded by the author himself. Dr. Margolis takes this opportunity of enumerating several Hebrew equivalents of the LXX *δόξα*, some of which are accompanied with very illuminating suggestions. The article concludes with a graceful congratulatory paragraph to the celebrant, deduced from the passage last considered.

Entirely after the manner of the higher critics of the Bible, Prof. Julian Morgenstern attempts a critical analysis of Gen. 14, trying to find therein the various strata from which it was composed. He regards vv. 11-24, omitting vv. 18-20, as the original of the story, a post-exilic Midrash, designed to enhance the glory of Abraham as a warrior. This narrative may have had an opening sentence, in which the name of the adversary was given, but this was suppressed by a later editor, who supplied the greater part of the 'introduction' (vv. 1-10). The author regards the entire chapter as probably the latest portion of the Hexateuch.

Rabbi Ephraim Frisch takes it as his task to establish the historicity of the 'Reformation of Hezekiah', which some modern critics are inclined to doubt. The author rightly assumes that if the arguments against the historical character of the narrative cannot be sustained, it is safe to believe that the passages relate an actual fact. Together with many other modern Biblical students, the author disregards the narrative as given in 2 Chron. 29. 3-30. 2, which he takes to be an embellishment by a later ecclesiastical scribe. The most important source is 2 Kings 18. 4, and this passage forms the subject of the discussion here. In a convincing manner and with considerable force, our author refutes the arguments against the historicity of

this verse one by one. The argument that the Prophets of the time did not speak against the objects which Hezekiah is reputed to have abolished is well set aside by the contention that outside of the fact that they do speak against these cult-objects, they were concerned mainly with the inner religiousness of the people. The argument that these cult-objects were regarded legitimate after Hezekiah's time is answered in the manner of the Talmud *אינהו נזרו ולא קבלו מיניהו אהו . . . נזרו וקבלו מיניהו* (Hullin 6 a). The author does not make any effort to explain the nature of the most important of Hezekiah's reforms, the destruction of the brazen serpent, perhaps because this he considers outside of the scope of his article (see Ewald, *History of Israel*, IV, p. 173, note; Sinker, *Hezekiah and his Age*, p. 55). It may be in place here to point out that the reference to Hullin 6 b is interpreted not as a conscious act on the part of his ancestors, but rather as an act of Providence to make them overlook this, so that Hezekiah might have this work to his credit (see Mahrsha and Maharam, *ad loc.*; comp. also Tos., *ad loc.*, s.v. *אלה מקום* referring to a different answer given to the same query in the case of Josiah in Shabbat 56 b). The author shows a praiseworthy spirit of reverence and a familiarity with the literature on the subject under consideration.

Dr. Israel Abrahams contributes a most illuminating essay on a rather novel subject. 'The Decalogue in Art' is his theme, a subject presenting many interesting points for the student of history and archaeology. Possessed of an amazing amount of information in Jewish and secular subjects, Dr. Abrahams draws freely from all kinds of sources regarding the treatment of the Decalogue in Jewish and Christian art. The origin for the introduction of the Ten Commandment Tables in the synagogue is not known. The author suggests the possibility that it was copied by the Jews from the custom that predominated in the Reform churches, but he regards this suggestion as rather hazardous. He has no proof of its use in the synagogue before the Reformation period. This, however, is no proof of its absence from the synagogue before that time, especially since

there was no uniform mode of the internal decoration of the synagogue and, even to-day, the custom of placing the Decalogue Tables in the synagogue is by no means universal.

The real nature of the differences that existed between the Pharisees and the Sadducees has been the subject of many a speculative study, for the reason that the sources at hand are mainly such as emanated from the Pharisaic school, and it could hardly be expected that the Pharisees would be entirely fair and impartial in their treatment of their opponents. Prof. Lauterbach attempts in a lengthy essay to offer a solution to this problem. According to his view, the Sadducees, who were the descendants of the aristocratic priestly families, were the direct followers of the Soferim, who were, our author believes, almost exclusively members of the same family. The Soferim were the custodians of the Law and the recognized authorities on all matters of law and practice, and this position was held also by the Sadducees. They believed that they had the right to add new laws and decrees, as new conditions may demand, but refused to recognize these new decrees as of equal importance with those of the Torah. They did not wish to seek support for their decrees in the Torah, since they believed themselves vested with the right of adding decrees, which, however, were only for the time being, and may at any time be abrogated, while the laws of the Torah were permanent and unchangeable. The lay scholars, who gradually rose to power, since the beginning of the Greek rule over Palestine, denied the priests the right of introducing new institutions, which were not provided for in the Torah. The Torah they regarded as all-sufficient for all times, and would therefore not accept any new law which had no basis in the divine Law. They dared not abrogate institutions that had taken hold of the people and become part of their lives, but endeavoured to find for them support in the written Law, and, when not successful in that, regarded them as of equal antiquity with the Law.

Our author works out this theory in detail and is quite successful in presenting a plausible thesis. One of his basic

arguments is taken from the incident narrated in Neh. 10. 30, where the people are said to have pledged themselves by oath to observe the Law of Moses. The Sadducees, according to our author (p. 187, note), regarded their obligation to keep the Torah as being derived from this oath and not from the intrinsic divine nature of the Law. Hence, it was sufficient if they observed the laws prescribed in the Torah, so as not to break the oath, which carried a curse with it. The Pharisees, on the other hand, claimed that the authority of the Law lay in its divine nature and was not due to an oath imposed outside of it. The stress laid on the oath by our author seems somewhat strained. An oath was taken in order to enforce certain laws which the people were in the habit of breaking. Some such laws are enumerated in the same chapter, and the nature of the oath in this case appears not much different from the oath taken by 'the priests, the Levites, and all Israel' to send away their foreign wives, in the time of Ezra (Ezra. 10. 3-5).

It is also doubtful whether the Soferim were all of priestly lineage as surmised by our author (pp. 180, 182, note 1). The Levites, of course, are frequently mentioned as members of this guild (see especially Neh. 8), but there were probably many Israelites among them as well (comp. Neh. 10. 29, *כל יורע מבין*). Still, even if we regard the later Pharisees as having been the direct followers of the Soferim, it may still be true that the authority of the priestly element, which predominated for a long period, was unquestioned until the lay element has become more powerful. The author promises to discuss the subject more fully in a special work which he has in preparation.

Prof. Bacher contributed a short study of the much-discussed Talmudic phrase *חלכה למשה מסיני*. Without attempting to make any general deductions or to present a more satisfactory interpretation of this phrase than has hitherto been given, the author cites twenty-four cases where it is used in Talmudic literature. We fail to find in this article any more light on the subject than that thrown by Weiss in his excellent chapter, in which this subject is fully treated (*Dor*, I, ch. 9; cp. also *Levy-Festschrift*, p. 212).

The article, however, has its value for the student, because of the array of the sources and because of the illuminating notes with which this is accompanied.

Prof. Krauss takes as his subject an exceedingly interesting social custom of the Jews. He endeavours to show the ethnological principle underlying the permission and encouragement given by the law to one to marry a sister's daughter. He first shows how all sectaries, beginning with the Zadokites, through the early Christians, the Karaites, the Mohammedans, and even the Falashas, forbid such a marriage. He then proceeds to present the Pharisaic point of view, quoting the Baraita in Yebamot 62 b and Sanhedrin 76 b, where such a marriage is regarded as a meritorious act, on a par with other acts of highest virtue. To the reasons quoted by the author in the name of Rashi and the Tosafists might be added the reason given in Rashi to Sanhedrin 76 b, which is also accepted by Maimonides (*Issure Bi'ah* 2, 14) and consequently extended also to a brother's daughter (comp. Maggid Mishneh, *ad loc.*, where a psychological reason is offered). Our author unnecessarily emends Rashi (p. 168, n. 5), for אשתו there refers to his own wife, i.e. his niece, in the spirit of the reason offered by Maggid Mishneh (ומבשרך לא תתעלם). Two additional reasons are given in Tosafot Yeshanim to Yebamot 63 a. One is because the sister would find it more difficult to find a suitable husband for her daughter than the brother would for his daughter. The other reason, also quoted in Tosaf. to Yebamot 99a, *s.v.* ספק, is more convincing. It is a greater merit to marry a sister's daughter than a brother's daughter, because in the case of the latter the Yibbum could not be performed. The endogamous propensity of the early Israelites is evidenced in numerous narratives of the Bible, and the reference to ומבשרך לא תתעלם by Rashi and Maimonides is based on sound intuition. Dr. Krauss's attempt to connect this with an old matriarchate principle is not convincing, at least as far as the Pharisaic viewpoint is concerned. Our author, however, has succeeded in throwing considerable light on a subject that is rather obscure.

Dr. Elbogen's suggestive, though not exhaustive, contribution

might well serve as an introductory chapter to a study on the Jewish Liturgy. The author first introduces a few striking instances, by which he wishes to show the manner in which the subject should be studied. In a second chapter he discusses the Mishnah in *Tamid*, ch. 5, which treats of the prayers offered by the priests during the morning service, and which is regarded as the oldest source of a regular service. The study of this important text, which is full of difficulties, is very illuminating, although several of these difficulties are left unsolved by the author. The suggestion that the phraseology was influenced by the actual practice in later times when the Mishnah was edited, should have been further elaborated, since it will tend to destroy to a large extent the value of the source. Dr. Elbogen, however, speaks with the authority of the expert, since he has made this special branch of Jewish literature his own, and his remarks are therefore full of suggestiveness and value.

That the Karaites, whose main principle apparently was that the Scriptures had no other significance than that indicated by the ordinary and simple meaning of the words, were guilty of employing the allegoric method of interpretation, is shown in an illuminating article by Dr. S. Poznański. The main task of our author is to show that several of the most prominent Karaites employed the allegorical method in the interpretation of certain legal precepts, by which they gave entirely new meanings to the passages under consideration, although the practices they enjoin may have been in vogue long before their time among other sects. Examples of such method are given from 'Anan, Benjamin Nahawendi, Daniel Kumisi, and Kirkisani. A sample section of the *Kitab al-Anwar*, by the last-mentioned author, is given here as an appendix. The author also gives, as a second appendix, the text of a part of Josef b. 'Ali's commentary to Genesis, in which the author conducts a polemic against Saadya for interpreting the vision of Abraham (Gen. 15) in an allegorical manner. The third appendix is taken from the same author's commentary to 1 Sam. 14. 32-5.

Prof. Schechter publishes a Midrashic fragment from a manu-

script in his possession, which he thinks is a part of the lost Midrash Yelamdenu. The text is provided by the editor with a short introduction and with a number of notes of reference and improved readings. In several instances the editor admits his inability to make the text clear. We might suggest a slight correction in the text on p. 264, which would remove the difficulty mentioned there in n. 13. If we substitute למה for שמה the reading will be very much in the same spirit as the remark in Tanhuma, ed. Buber, Noah XI, אִם לָנָח נוֹכַח, לָמָּה לָחִיָּה וּלְבָהֳמָה.

The purpose of the Levirate Marriage and its relation to the social status of women in ancient Judea are discussed by Rabbi Israel Mattuck. Rabbi Mattuck is of the opinion that the institution was established with the view of benefiting the widow, who would have had no status, since she had no children. He takes up first the section in Deut. 25 verse by verse and comments upon each verse. (For the suggestion that לֹאִישׁ זָר is a gloss upon הַחַיִּיָּה, see Ehrlich, *Mikra ki-Peshuto*, *ad loc.*) He then proceeds to discuss the law itself, comparing it with the few cases of levirate marriage recorded in other parts of the Bible. While it is true that the question of inheritance is an important factor in this law, the emphasis laid by our author on the benefits accruing to the widow is somewhat overdrawn. It appears that the main point at issue is the establishment of an heir to the parental estate, even though the heir be a fictitious one. The references in Ruth and in Rabbinic literature, however, point very strongly to the reason of making provision for the widow. The author's argument that this law is found only in Deuteronomy, where the moral and ethical aspect of the laws receive greatest emphasis, is also deserving of consideration. The Halizah ceremony is regarded by our author as one of the ancient forms of divorce, which became necessary, since the childless widow was regarded as the wife of her husband's brother immediately upon the death of her husband, and a formal divorce was necessary in order to release her (comp. Hitzig, *Psalmen*, lx. 10, and Delitzsch, *Psalmen*, *ad loc.*, and Wetzstein in the Excursus at the end of the latter volume).

A large number of the poems written by medieval poets are devoted to the subject of admonishing the soul against the allurements of the material world and reminding her of her true nature and destiny. Many of these poems have found their place in the liturgy. Prof. Goldziher endeavours to show in a brief contribution the connexion between the theme of these poems and the theme of a similar class of poems in Arabic, which are classed under the general heading of *Mu'atabat al-nafs*. He regards it quite likely that the Jewish poets were influenced to adopt this attitude, which borders very closely on the ascetic, from their Arabic contemporaries. This mode of thought received an additional stimulus by the introduction of neo-Platonic philosophy in Arabic-speaking countries, which exerted an influence on Jew and Moslem alike. The instigation to the soul to take account of its actions (השבון הנפש) naturally formed the next step in the development of this thought. To this, Jewish thinkers, notably Bahya, devoted much space in their works, regarding it as the best means towards humbling the soul and making it put forth efforts for improvement and correction.

'Kawwana: the Struggle for Inwardness in Judaism', is the title of a very interesting article by Dr. H. G. Enelow. Kawwanah is a term difficult of precise definition 'for the reason that it kept on gathering significance from the religious experience of the Jewish people'. The author sets out with the purpose of tracing the meaning of this term in Jewish literature and its application in Jewish life. He shows its connotation in Bible and Talmud, the stress laid upon 'inwardness' not only in prayer but also in the performance of all religious acts, until he reaches to the importance attached to it by the Jewish religious philosophers of the Middle Ages. He then shows the deterioration of the idea into the mystic and esoteric speculations of the Zohar and later Kabbalistic works, until it was again rescued by the Hasidim and modern reformers. The *tendenz* displayed by the author in the last few paragraphs of the article detracts considerably from the scientific value of his contribution. The author would make us believe that the whole trend of later Jewish life was saturated with the mystic notions of the Kabbalah, which, of course, is not

true. It is the impression that one obtains also in reading the German edition of Graetz's History (not the Hebrew translation), against which modern students of Jewish history strongly object. Perfunctoriness in prayer and in the observance of other ceremonial acts was decried by Jewish leaders of the seventeenth and eighteenth centuries as well as by those of the ninth and tenth centuries, and the multiplicity of *kawwanot* does not necessarily make *Kawwanah* impossible. Our author also fails to notice the influence on the maintenance of the pure devotion by the great zeal for study and intellectual investigation, especially as it manifested itself in the seventeenth and eighteenth centuries among the Jews of Poland. In spite of these defects, the author succeeded in presenting a lucid treatment of a subject that needs new emphasis at the present time.

In his analysis of Luzzatto's devotional work, *Mesillat Yesharim*, Dr. Emil G. Hirsch shows how truly modern the old Jewish thinkers were, if we only take the trouble to translate their words and thoughts in modern phraseology. This little book has only recently been introduced to the outside world in two German renderings. Dr. Hirsch's summary in English will help to spread the well-deserved fame which the book enjoyed among Jews for nearly two centuries. The 'Path of the Righteous' is mainly an ethico-religious treatise, and the author manages to steer clear of the mysticism which played such an important part in his life. Even in the last chapter, where Dr. Hirsch sees traces of mysticism, the evidence is not conclusive. It may be understood in the light of the oft-quoted phrase of *הבא לטהר מסייעין אותו*, so that 'holiness' is not to be regarded as the direct gift of God, but rather as coming to the one who makes sincere efforts to attain it through divine assistance. Dr. Hirsch points out in several instances the great difference between Luzzatto's conception of life here and in the hereafter and the prevalent conceptions of the dominant church on these matters. The article concludes with a neat, homiletic interpretation of the catalogue of the cardinal virtues, treated in the book, as applied to the celebrant. It is a pity that this

otherwise excellent summary of a most interesting work is marked by several inaccuracies in quoting references and in translating Hebrew phrases, due mainly, no doubt, to misprints.

Dr. Louis Grossman writes on the subject of 'Principles of Religious Instruction in Jewish Schools', a subject to which our author has devoted his energy and best powers, especially in recent years. Perhaps it is because of our high anticipations that we meet with disappointment after a careful perusal of this article. Instead of laying down several well-defined principles of Jewish pedagogy, as the title would lead us to expect, Dr. Grossman gives here some general contemplations on education in general, its defects and drawbacks, and on Jewish education in particular. He fails to present a clearly-defined purpose for Jewish education as such, and even brings contradictory views on that subject in the course of his article. The plea is made for the recognition of child-life on the part of the teacher, a plea which is timely and fully justified. The development of the child into proper manhood and womanhood is the main duty and business of the secular as well as of the religious teacher. The subjects taught are only the means toward that end. Still, besides that general end, the Jewish religious teacher must have a more specific purpose in view. His purpose should be to bring up a generation of Jews. 'We teach Judaism not to uphold it, but to uphold our childhood in it', is a fine rhetorical sentence, but will not be subscribed to by most people who have given thought to the subject of Jewish education. It is true, Dr. Grossman himself fortunately does not adhere to this principle, and gives also some emphasis, especially in the last few paragraphs, to the idea of the purpose of Jewish education as distinct from secular education, but he does not give to it sufficient prominence as a 'principle', or rather 'the principle', of Jewish religious education. The essay contains a number of valuable, practical suggestions, but these are often drowned by a mass of rhetoric, which obscures the subject and detracts from the value of this contribution.

'Dreams as a Cause of Literary Compositions' forms the subject of a short essay by Prof. Henry Malter. The author

quotes a number of interesting incidents from medieval Jewish literature where it is recorded that certain literary compositions, even decisions of cases of law and interpretations of difficult passages, were suggested to their authors in dreams. Dr. Malter does not attempt to go deeply into the subject and to analyse the psychology of such assertions and their probable veracity. In a note to his introductory chapter of his edition of Palquera's *אגרת החלום* (*JQR.*, new series, I, 457, n. 10) Dr. Malter expresses his belief in the truth of at least this author's assertion and promises to deal further with the subject in a series of articles. In this connexion the incident of Joseph Caro's reputed *מגיד* and its relation to Socrates' *δαιμόνιον* would make quite an interesting study.

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MIDRASH AND MISHNAH

A STUDY IN THE EARLY HISTORY OF THE HALAKAH

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I

THE teachings of the Halakah, as preserved to us in the tannaitic literature, have been given by teacher to disciple and transmitted from generation to generation in two different forms, namely, Midrash and Mishnah. The one, Midrash, shortened from 'Midrash Torah',¹ represents the Halakah as an interpretation and exposition of the Torah. It teaches the Halakah together with its scriptural proof, that is, in connexion with the passage from the Pentateuch, on which it is based or from which it can be derived, thus forming a halakic commentary to the written law contained in the Pentateuch. This form is especially used in our halakic Midrashim, Sifra, Sifre, and Mekilta, but it is also found in some parts of the collections

¹ The term מדרש from דרש 'to search, inquire, investigate', means 'research, inquiry', and מדרש תורה accordingly means an inquiry into the meaning of the Torah, an exposition of all laws and decisions which can be discovered in the words of the Torah. In this sense the term 'Midrash Torah' is used in the Talmud (b. Kiddushin 49b) where it designates the halakic interpretation or exposition of the Torah. As we now have many Midrashim to the Torah of a haggadic character, the term Midrash Torah would be too indefinite to designate an halakic exposition of the Torah. A haggadic exposition of the Torah would also be a Midrash Torah. The more specific term Midrash Halakah is therefore now used to designate a halakic interpretation of the Torah. See the writer's article 'Midrash Halakah' in the *Jewish Encyclopaedia*, VIII, pp. 569-72.

of our Mishnah and Tosefta, as well as in many so-called Midrash-Baraitot scattered in both the Palestinian and the Babylonian Talmud. The other form, the Mishnah, represents the Halakah as an independent work, giving its dicta as such, without any scriptural proof, and teaching them independently of and not connected with the words of the written law. For this reason the Mishnah is also designated as 'Halakah' or in the plural 'Halakot', that is, merely rules or decisions. This form is especially used in our collections of the Mishnah and the Tosefta, but it is also found in many Baraitot scattered in the Talmud and in some parts of our halakic Midrashim.² (See D. Hoffmann, *Zur Einleitung in die halachischen Midraschim*, Berlin, 1887, p. 3.)

Of these two forms of teaching the Halakah, the Midrash is the older and the Mishnah the later. The Midrash was the original form, and was used in the earliest times, in the very beginnings of the Halakah. This is quite self-evident, as the Midrash was in reality the origin of the Halakah. The dicta of the Halakah had their source in the Midrash Torah, i.e. an inquiry into the full meaning of the written law from which alone the earliest Halakah derived its authority.

The returned Babylonian exiles, constituting the new Jewish community, reorganized by Ezra and Nehemiah, accepted the written Torah, so to speak, as their constitution. They entered into a covenant by oath, to keep and follow the laws of Moses as contained in the book read

² As the difference is only in form, it is not surprising to find that very many of the Halakot are cast in both forms. Very often the same Halakot which are found in the halakic Midrashim together with their scriptural proofs are also found in the Mishnah and Tosefta without scriptural proofs as independent Halakot.

to them by Ezra (Neh. 8 and 10. 30). The Book of the Law, therefore, as read and interpreted by Ezra, was for them the only authority they were bound to follow. Whatever was not given in the book, they were not bound to accept. All the religious practices and the time-honoured customs and even the traditional laws, if there were such, had to receive the sanction of the written Law in order to be absolutely binding upon the people. This means, that the practices, customs, &c., had to be recognized as implied in the written Law or contained in its fuller meaning. The teachers, therefore, interpreted the written Law so as to include in it or derive from it all those customs and practices. Thus, the teachings of the Halakah (for all such rules, customs, practices, and traditional laws constituted the Halakah) had to be represented as an interpretation or an exposition of the written Law. This, as we have seen above, means, to be given in Midrash-form.

It is expressly stated of Ezra that he explained and interpreted the Torah to the people, and that he set his heart to search (לררוט) the meaning of the Law, to interpret it, and to teach in Israel statutes and judgements (Ezra 7. 10). We learn from this, that Ezra taught only the Book of the Law with such interpretations as he could give to it. His successors, the Soferim, who were the earliest teachers of the Halakah, did the same. They gave all their teachings merely as interpretations to the Book of the Law. Indeed, the very name Soferim was given to them because it characterized their manner of teaching. This name סופרים is derived from ספר 'the Book'. It means 'Bookmen', and it designated a class of people who occupied themselves with the Book of the Law, who interpreted it and who based all their teachings upon this book exclu-

sively (Frankel, *Hodegetica in Mischnam*, p. 3, and Weiss, *Dor*, I, p. 47).

For a long period this Midrash-form was the only form used in teaching the Halakah. This is confirmed by reliable traditions reported to us in Rabbinic literature. One such report is contained in the following passage in the Pal. Talmud (Moed katan III, 7, 83^b):

איהו תלמיד חכם? חזקה אמר כל ששנה הלכות ועוד תורה אמר
ליה ר' יוסי הרא דאת אמר בראשונה אבל עכשיו אפילו הלכות.

'Who is to be considered a scholar? Hezekiah says, One who has studied the Halakot as an addition to and in connexion with the Torah.'³ Said to him R. Jose, What you say was [correct] in former times, but in our day, even [if one has studied merely detached] Halakot, [he is to be regarded as a scholar].' Here it is plainly stated that in earlier times (בראשונה) the only form of teaching Halakot

³ The term ועוד means 'addition', as, for instance, in the phrase: ויהודה ועוד לקרא 'Is it necessary to mention the custom in Judea as an addition to the law indicated in the Scriptures?' (b. Kiddushin 6a). It is also found in the plural form, ועודות 'additions' (b. Erubin 83a). The expression ועוד תורה here means, therefore, as an addition to the Torah, i. e. to teach the Halakot not independently but as additions to the passages in the Torah from which they are derived. In almost the same sense it is also interpreted by the commentator Pne Mosheh, *ad loc.*

It should also be noticed that in b. Kiddushin 49a Hezekiah says that to be called a student (שונה) it is enough if one has studied merely detached Halakot. This, however, does not contradict his saying in our passage in the p. Talmud. For תלמיד חכם is a scholar of a higher degree of learning. From b. Megillah 26b it is evident that the student called שונה is not as advanced as the scholar called תלמיד חכם. To be considered a scholar, such as is designated by the name תלמיד חכם, Hezekiah tells us, one must study the Halakot in the Midrash-form. For even after the Mishnah-form had become popular, the Midrash was considered the proper form to be used by advanced scholars. See Guttman, *Zur Einleitung in die Halakah*, Budapest, 1909, p. 20.

was as an addition to and in connexion with the written Law, that is to say, in the Midrash-form. In those days, therefore, one could not acquire a knowledge of the Halakah, i. e. become a scholar, except by learning the Midrash, for the very good reason that the halakic teachings were not imparted in any other form.

Sherira Gaon who no doubt drew upon reliable sources likewise reports in his Epistle (Neubauer, *M. Ḳ.*, ch. I, p. 15) that 'in the earlier period of the second temple, in the days of the earlier teachers, all the teachings of the Halakot were given in the manner in which they are found in our Sifra and Sifre', that is, in the Midrash-form.⁴ Modern scholars⁵ have, accordingly, recognized it as an established historic fact that the Midrash was originally the exclusive form in which all teachings of the Halakah were given.

Not only were those Halakot which were derived from some scriptural passage by means of interpretation taught in Midrash-form, that is to say in connexion with the passages which served as proof, but also such Halakot and teachings as were of purely traditional origin—rules, practices, and customs that had no scriptural basis at all were likewise taught in this manner. The latter were taught in conjunction with some scriptural passage with which they could in some manner be connected, or together with certain written laws to which they were related, either as

⁴ The passage in the letter of Sherira Gaon reads thus: וספרא וספרי דרשי דקראי נינהו והיכן רמיזי הילכתא בקראי ומעיקרא במקדש שני לתן. ביומיה דרבנן קמאי לפום הדין אורחא הוו תני להון 'them', i. e. the Halakot, only in the form used in our Sifra and Sifre, i. e. Midrash.

⁵ N. Krochmal in *More Nebuke Ha-Zeman*, porta XIII, Lemberg, 1851, pp. 166-7; Z. Frankel in *Hodegetica in Mishnam*; Weiss, *Dor Dor we-Dorshow and Mabo la-Mechilta*; Oppenheim, 'Toledot ha-Mishnah' in *Beth Talmud*, II; D. Hoffmann, *Die erste Mischnah*, Berlin, 1882; and others.

corollary or modification. (See D. Hoffmann, *Die erste Mischnah*, Berlin, 1882, pp. 5-7.) This procedure was necessary, because the only recognized authority was the written Book of the Law which the teachers used as their text-book in teaching. However, in teaching out of this text-book, they gave not only the meanings of words and the explanations of each written law, but also additional rules as well as modifications to some laws. All of this may be included in an exposition (מרש) of the Torah and could properly be taught in connexion with the text. Thus the Midrash-form could continue to be in exclusive use for teaching the Halakah, even after the latter, in the course of time, came to include traditional laws and customs, as well as new institutions and decrees issued and proclaimed by the teachers themselves in their capacity as religious authorities.⁶

The Mishnah-form, on the other hand, is of a much later date. It was introduced a long time after the Midrash-form⁷ and was used side by side with it. At

⁶ Weiss, *Mabo la-Mechilta*, p. iv, remarks about the Soferim: שבכלל תרגומם ופירושם למקרא כללו גם דברים אשר מקורם הגזירה והתיקון. Although the instance mentioned by him as proof for his statement is not a teaching of the Soferim (see below, note 55), yet the statement as such is correct. The Soferim or those who only taught in the Midrash-form could include in their teachings altogether new laws and decrees, issued by themselves as religious authorities, by connecting them with the scriptural laws. Only we may assume that it rarely happened that they taught a traditional law or a decree of their own merely in connexion with some scriptural law. In most cases, the Soferim, who had charge of the text of the books of the law, could manage to indicate in the text itself, by means of certain signs and slight alterations, any traditional custom or decree of their own. Thus, these same decrees could be taught as interpretations of the written law. See N. Krochmal, *op. cit.*, p. 167. Compare also below, notes 36 and 37.

⁷ Georg Aicher (*Das Alte Testament in der Mischnah*, Fr.-i.-Br., 1906, pp. 165 ff.) stands alone in the assumption that the Mishnah is older than

no time did the Mishnah-form become the exclusive method for teaching the Halakah, because the Midrash never ceased to be in use.⁸ At just what date this Mishnah-form was introduced, that is to say, just when the teachers of the Halakah began, for the first time, to teach Halakot independently of the written law, has, to my knowledge, not yet been ascertained. Sherira Gaon who, as we have seen, informs us that at some period in earlier times the Midrash-form was the only one in use, does not state exactly how long that period lasted, and does not mention when the Mishnah-form was introduced. Neither is there any other gaonic report to tell us when this happened.⁹ Hoffmann (*op. cit.*, pp. 12-13) states that, according to the views held by the Geonim, the Mishnah-form was first introduced in the days of Hillel and Shammai, but he fails to bring proof for this statement. To my knowledge, there is no foundation in gaonic literature for the views ascribed by Hoffmann to the Geonim. Hoffmann bases his theory on the spurious

the Midrash. This cannot be maintained. His statement (p. 64) that 'the appearance of scriptural proof in connexion with the Halakah was due to the radical changes effected by the catastrophe of the year 70', hardly needs any refutation. The many Halakot in the Midrash form given by teachers in the time of the Temple as well as the disputes between the Sadducees and Pharisees, hinging upon different interpretations of scriptural passages as bases for their respective Halakah, ought to have shown Aicher to what extent Midrash was used before the year 70.

⁸ We must emphasize this fact against the theory advanced by Weiss and Oppenheim and also by Jacob Bassfreund in his *Zur Redaction der Mischnah* (Trier, 1908, pp. 19-24), that there was a time when the Midrash-form was altogether abandoned, and the teachings of the Halakah given exclusively in Mishnah-form. We shall see that this theory is untenable (below, notes 15, 22, and 53).

⁹ The account given in the letter of Sherira stops very abruptly. See the discussion at the end of this essay.

responsum found in *Shaare Teshubah*, No. 20, and ascribed to Hai Gaon,¹⁰ in which the following passage is found :

דע מימות משה רבינו עד הלל הזקן היו שש מאות סדרי משנה כמו
שנתנם ה"ב"ה למשה בסני ומן הלל ואילך נתמעט ונתמסכן העולם
וחלשה כבודה של תורה ולא תקנו מהלל ושמואי אלא ששה סדרים
בלבד.

'Know, that from the days of Moses our Teacher until Hillel the Elder, there were six hundred orders of Mishnah just as God gave them to Moses on Sinai. However, from the time of Hillel on the world became impoverished, and the glory of the Law was diminished, so that, beginning with Hillel and Shammai, they arranged only six orders.' It is evident that this responsum cannot be taken to represent a reliable gaonic tradition, as it is apparently based on the haggadic passage in *Hagigah* 14a, and is accordingly of merely legendary character. Aside from this, the passage does not say what Hoffmann has read into it. It does not even deal with the origin of the Mishnah-form. If anything, we can see from this responsum that its author, quite to the contrary, assumed that the Mishnah-form was very old, and that it was given to Moses on Sinai.¹¹ He deals merely with the origin of six

¹⁰ This responsum had been added by some later hand to the responsa of Hai Gaon, but does not belong to the Gaon. Comp. Harkavy, *Studien und Mitteilungen*, IV, p. xiv. The fact that this report is repeated in *Seder Tannaim we-Amoraim*, (Breslau, 1871, p. 29) and in *Sefer Hakanah*, p. 81b, and in S. Chinnon's *Sefer Krito*t (Book *Yemot Olam*, Amsterdam 1709, p. 20a) does not in the least alter its legendary character and cannot make it more reliable, for the authors of all these works drew from one and the same source. This source cannot be of a more reliable character than the *Midrash Abkir*, from which the *Yalkut* (Genesis, sec. 42) quotes the statement that Methuselah studied 900 orders of Mishnah, משותלח צדיק, נמור היה והיה שונה ט' מאות סדרי משנה.

¹¹ The belief that the Mishnah was given to Moses on Sinai is repeatedly

orders of Mishnah which he assumed to have been extant in the days of Hillel and Shammai. These six orders were in his opinion but a poor small remnant of the six hundred orders which Moses received from God on Sinai and which were extant till the days of Hillel when the world became impoverished and the glory of the Torah diminished. Hoffmann arrives at his interpretation of this responsum by arbitrarily giving two different meanings to one and the same term used by the author twice in one sentence. He states (p. 13) that when the Gaon speaks of the 'six hundred orders of Mishnah', he is using the term 'Mishnah' in a broad sense to designate traditional law in the Midrash-form and not in the Mishnah-form, but when the Gaon speaks of the reduced 'six orders' extant in the days of Hillel and Shammai, he uses the term 'Mishnah' in a narrow sense to designate only independent Halakot in the Mishnah-form. This distinction is extremely arbitrary. Furthermore, when Hoffmann concludes his argument with the remark (*ibid.*, p. 13) that 'No doubt the six orders of Mishnah introduced in the days of Hillel and Shammai were, like our present Mishnah, composed in the form of independent Halakah, and by this *new form* were distinguished from the earlier form of teaching', he no longer

expressed in the Haggadah. See b. Berakot 5a and p. Hagigah I, 8, 76d. In the Pirke de-Rabbi Eliezer, ch. xlvi, it is said that during the forty days which Moses spent on the mountain, receiving the Law, he studied the Scriptures (ספרי) in the daytime and Mishnah at night. In Pesikta Rabbati V (Friedmann, p. 14 b) it is said that Moses wished to have the Mishnah written, but God told him that in order to distinguish Israel from other nations it was better that the Mishnah should be given to Israel orally, so that the other nations should not be able to claim it for themselves. See also Tanhuma, *Ki-Tissa* (Buber, pp. 58b and 59a), and p. Hagigah, *l. c.* The author of our responsum had as his authority such haggadic sayings when he spoke of the Mishnah which God gave to Moses on Sinai.

gives the views of the author of the responsum, but his own. And these views are absolutely wrong.¹²

Thus we see that there is no mention in gaonic literature,¹³ of the time when this innovation in the form of teaching the Halakah took place. Neither is there any report in talmudic¹⁴ or gaonic sources about the cause of this innovation. We are not told why it was necessary or desirable to introduce a new form of teaching Halakah alongside of the older Midrash-form.

Modern scholars have attempted to answer these questions; both to fix the date and to give the reasons for this innovation in the method of teaching. However, the various theories advanced by these scholars are all unsatisfactory. They are the result of mere guess-work—without solid proof or valid foundation. It will be shown

¹² There is no doubt that at the time of Hillel and Shammai there were no Mishnah-collections like our Mishnah. The responsum in Shaare Teshubah, § 187, which tells us that when a certain Gaon died they found that he had the six orders of the Mishnah of the days of Hillel and Shammai, which had been hidden away, is spurious and legendary. See S. D. Luzzatto, *Beth ha-Ozar*, pp. 55 b-56 a. Although there were in the times of Hillel and Shammai collections of Halakot composed in Mishnah-form, this form was not new to them and could not be the characteristic which distinguished them from the form of teaching used before. For, as we shall see, there had been even before Hillel and Shammai collections of independent Halakot in the Mishnah-form. And if Hillel himself composed a Mishnah-collection, he did not arrange it in order, and did not divide it into tractates as Pincles (*Darkah shel Torah*, pp. 8-9) and Bassfreund (*Zur Redaction der Mishnah*, p. 25) assume. The arguments brought forward by the latter to prove that Hillel's Mishnah-collection was arranged and divided into tractates are not convincing.

¹³ On Saadya's opinion see further below.

¹⁴ There is, however, as we shall see in the course of this essay, a report in the Talmud stating until when the Midrash-form was in exclusive use. This talmudic report has been overlooked or else not correctly understood, for not one of the scholars dealing with the problem of fixing the date of the beginning of the Mishnah-form has referred to it.

that some are based upon inaccurate reasoning, and all of them are in contradiction to certain established historic facts.

We have already seen that the theory which Hoffmann ascribes to the Geonim has no foundation in gaonic literature and that it is altogether Hoffmann's theory. But, no matter whose it is, the theory itself cannot be maintained.¹⁵ In the first place, there were Mishnah-collections before the time of Hillel and Shammai, as Rosenthal has proved (*Ueber den Zusammenhang der Mishnah*, Erster Teil, 2te Aufl., Strassburg, 1909). In the second place, the introduction of a new form necessarily precedes any collection of Halakot composed in this new form. It must be quite plain that there were individual, detached Halakot taught in the Mishnah-form (and not in the Midrash-form) before any collection of such detached Halakot could be made. Accordingly, if we assume with Rosenthal (*op. cit.*, p. 111) that a collection of such independent Halakot in the Mishnah-form was already arranged in the time of Simeon ben Shetaḥ, we have to go still farther back in fixing the time when the teachers first began to separate the Halakah from its scriptural proof and teach it independently, as Mishnah. This would bring us to about one hundred years before the time of Hillel and Shammai. Not only is this theory of Hoffmann wrong in respect to

¹⁵ Compare also Bassfreund (*op. cit.*, pp. 18 ff.) who likewise seeks to refute Hoffmann's theory. Some of Bassfreund's arguments, however, are not sound. He is altogether wrong in assuming that for a long time before Hillel the Mishnah was the exclusive form used in the teaching of the Halakah, and that Hillel was the first to reintroduce the Midrash-form. He confuses the development of the Midrash methods which were furthered by Hillel with the use of the Midrash-form which had no need of being introduced by Hillel since it was never abandoned (see above, note 8, and below, note 22).

the date given for the introduction of the Mishnah-form, but it is also unsatisfactory in regard to the cause of this innovation.

According to this theory, the Mishnah-form was introduced in order to assist the memory in mastering the contents of the traditional law.¹⁶ However, it is difficult to see how the teachers could have considered the new form of greater aid to the memory than the old form. This new form is on the contrary quite apt to make it more difficult for the memory. It seems to us that it is less of a task for the memory to retain Halakot taught in the Midrash-form. The written Law, being the text-book, each passage in it, as it is being read, helps, by mental association, to recall all the halakic teachings based upon it. On the other hand, it is much harder to remember detached Halakot given in an independent form, especially when they are not arranged systematically or topically but merely grouped together. This, we must keep in mind, was actually the mode of arrangement used in the earlier Mishnah collections.¹⁷

Hoffmann himself must have felt that this theory was not satisfactory, for later in his book he advances another

¹⁶ The same reason is also given by Frankel and Weiss. They all seem to have been influenced by the haggadic sayings found in the Talmud, sayings which exaggerate the number of Halakot known to former generations.

¹⁷ Hoffmann makes the mistake of assuming (*op. cit.*, pp. 13, 15, and 48) that simultaneously with the separation of the Halakot from their scriptural basis came the grouping of such detached Halakot into orders and treatises, as we have them. But this is absolutely wrong. The earlier Mishnah went through many different forms of grouping before it was finally arranged according to subjects and divided into treatises and orders. See the writer's article in the *Jewish Encyclopaedia*, VII, p. 611. The opinions expressed by the writer there on page 610 (following Hoffmann) are hereby retracted.

and altogether different theory (*op. cit.*, p. 48). According to this second theory, the innovation was not made for the purpose of aiding the memory, and was not made in the days of Hillel and Shammai. Here Hoffmann assumes that the Mishnah-form was first introduced in the days of the later disciples of Hillel and Shammai. The purpose of the innovation, he explains, was to maintain the unity of the Halakah by minimizing the differences of opinion and eliminating the disputes about the halakic teachings which arose among these very disciples of Hillel and Shammai. These disputes, Hoffmann tells us, were in many cases only formal, namely, concerning the underlying Midrash or the scriptural proof for the halakic teaching. The traditional Halakah, as such, was agreed upon by all the teachers. That is to say, there was no dispute about the transmitted rules and decisions which all the teachers received alike. The teachers, however, often did disagree as to the scriptural passages and their interpretations whereon these received halakic decisions were based. One teacher would derive a certain Halakah by interpreting a given passage in a certain manner. Another teacher would deduce the same Halakah from another passage, or even from the same passage but by means of another interpretation. Thus, as long as the Halakah was taught only in Midrash-form there existed many differences of opinion between the teachers, not in regard to the halakic decisions or rules in themselves but in regard to their midrashic proof and support. The teachers of those days who were very anxious to maintain harmony among themselves and unanimity in their teachings therefore decided to separate the Halakah from the Midrash and to teach it independently of the scriptural proof or support. In other

words, they introduced the Mishnah-form—the Halakah as an independent branch of learning. By this innovation all the differences of opinion and disputes about the midrashic proof necessarily disappeared. Thus uniformity was restored in teaching the Halakah, and harmony was established among the teachers.

This second theory of Hoffmann is even less tenable than the first. In the first place, it fixes the date for the introduction of the Mishnah even later than the first theory. Consequently, in this respect it is refuted by the same arguments that were brought against the first theory. We have seen above that there were Halakot in Mishnah-form, even collections of such Halakot, at a much earlier date. Furthermore, the explanation of the cause for the innovation put forth in this theory presents a palpable error in reasoning. It presupposes that the decisions of the Halakah, as such, were older than their midrashic connexion with the scriptures, and that at some earlier time they had been transmitted independently of scriptural proofs. For this reason the teachers could well be unanimous in accepting the Halakah and yet find cause for dispute as to methods of proving certain halakic decisions from the scripture by means of the Midrash. But this means nothing else than that there were some Mishnahs, that is, independent Halakot before the disputes about the scriptural proofs caused their separation from the Midrash. This line of reasoning contradicts itself. It sets out to find the cause for the first introduction of the Mishnah-form, but assumes that before this introduction some Halakot had already been transmitted in Mishnah-form. In other words, this so-called first introduction was really not a first introduction.

If they had taught only in Midrash-form, the alleged evil results which the Mishnah-form, according to Hoffmann, was to remedy could never have arisen. It would have been impossible for the teachers to agree upon a halakic decision, and at the same time to disagree about its scriptural proof. Since every teacher received each Halakah in the same Midrash-form, that is, as an interpretation of, or connected with, a certain scriptural passage, every one who remembered the decision must have remembered the form in which he received it, that is, the scriptural passage with which it was connected. It is very improbable that a teacher remembering the decision, but having forgotten the scriptural basis, would have supplied another scriptural proof therefor, and then disputed with his colleagues who remembered the right passage on which this Halakah was based. If he did forget the passage for which the Halakah was an interpretation, the mere mention of that passage by his colleagues must have brought it back to his memory. It is evident that there could be no universal acceptance of a Halakah together with disputes regarding its proofs, unless such a Halakah had been taught apart from its proof. This, however, was not done, as long as the Midrash-form was in exclusive use, that is, as long as the Halakah was merely taught as a commentary on the text of the Law.¹⁸

¹⁸ This would hold true even if we should believe in the genuineness of the so-called *הלכות למשה מסיני*, that is, that there had been given oral laws to Moses on Sinai and transmitted independently of the written law. For, as Hoffmann himself states (*op. cit.*, p. 7), even all the traditional teachings were taught together with the scriptural laws and connected with them in the Midrash-form. All through the period of the Soferim, and according to Hoffmann till the time of the disciples of Hillel and Shammai, such traditional laws would somehow be connected with the Scriptures. The mental attitude of the teachers was not in the direction

Quite as unsatisfactory is the theory advanced by Z. Frankel (*Hodegetica in Mischnam*, pp. 6, 7, and 10). According to this theory, the innovation of teaching detached Halakah in the Mishnah-form was made by the last group of Soferim.¹⁹ This was done to overcome three difficulties which Frankel tells us existed in those days. In the first place, the halakic decisions based upon the individual passages had increased to such an extent that the task of studying and teaching them in the Midrash-form became very difficult. In the second place, the absence of inner logical connexion between the individual dicta of the Halakah made its study a work of mere of separating such traditional laws from the scriptural passages with which they had for centuries been connected. This would have remained their attitude even if they had realized that such a connexion was merely artificial (see below, note 27). No differences of opinion were therefore possible as to how such traditional laws were to be connected with the Scripture.

It should be noted that Hoffmann seems to have subsequently abandoned both his theories. In his introduction to his translation of the Mishnah, Seder Nezikin (p. x, note 3), he states that according to the Palestinian Talmud the so-called Number-Mishnahs were already compiled and redacted by the men of the Great Synagogue. He refers to the passage in Shekalim, V, 48c, which, like Weiss and Oppenheim, he misinterprets. See below, note 26.

¹⁹ N. Krochmal (*op. cit.*, pp. 174-5) also assumes that even the last of the Soferim began to teach independent Halakot (so also Pineles, *Darkah shel Torah*, pp. 8-9). Like Frankel, Krochmal also gives as the reason the increased number of the Halakot and new decisions which could no longer be connected with the Scripture in the form of the Midrash. There is, however, a great difference of opinion between Krochmal and Frankel as to dates. Krochmal extends the period of the Soferim until about 200 B.C., assuming that the Simon mentioned in Abot as 'one of the last survivors of the Great Synagogue' is Simon II, the son of Onias II. Krochmal therefore designates him as the last of the Soferim and the first of the Mishnah teachers, the Tannaim (*loc. cit.*, p. 166). According to Frankel, the last member of the Great Synagogue was Simon the Just I, about 300 B.C. This Simon, then, was the last of the Soferim in whose days the Mishnah was introduced (*Hodegetica*, pp. 68 and 30-31).

mechanical memorizing—a very tiresome and repulsive procedure for the intelligent student. In the third place, the Pentateuch gives the laws pertaining to one subject in many different places. As the Midrash follows the Pentateuchal order, there could be no systematic presentation of all the laws on any one subject. The laws on one subject, for instance, Sabbath, being derived from widely separated passages in the Pentateuch, had to be taught piecemeal, each decision in connexion with its scriptural basis. For all these reasons, Frankel tells us, the last group of the Soferim decided to separate the Halakot from their scriptural bases and to teach them in the new Mishnah-form systematically arranged according to subjects.

Like Hoffmann, Frankel assumes that the plan of arranging the Halakot according to subject-matter was coincident with the very introduction of the Mishnah-form, so that the very earliest Mishnah collections must have been arranged topically. This, as we have seen, is incorrect. The topical arrangement of the Mishnah is of later date. It was preceded by other forms of grouping peculiar to the earlier Mishnah collections. Frankel himself credits R. Akiba with the systematic arrangement of Halakah according to topics (*op. cit.*, p. 115). He also qualifies by the following remarks his former statement concerning the Soferim and their arrangement of the Halakah according to subjects: ‘We have stated in the preceding chapter that the teaching [of the Halakah] according to subjects began at the end of the period of the Soferim. Nevertheless, a long time undoubtedly passed before all [the Halakot] that belonged to one subject were brought together under one heading. Very often while dealing with one subject they would [not keep

strictly to it but] drift to another and pass from one halakic theme to another . . . R. Akiba, however, began to arrange the old Halakot to put each in its proper place and [under the topic] to which it belonged.' ²⁰ If, however, the order in the Mishnah before R. Akiba was not strictly according to subjects, as Frankel here admits, and if some Halakot bearing on one subject would often be treated among Halakot dealing with another subject, what advantage was there then in separating the Halakot from the Midrash and teaching them in the Mishnah-form? The shortcomings of the Midrash-form, according to Frankel, consisted in the fact that the Halakot of one subject could not be taught connectedly but were interrupted by Halakot belonging to another subject. However, according to Frankel's own statement, the same defect was inherent in the Mishnah-form up to the time of Akiba.

Taking up another statement of Frankel, it seems difficult to realize why the study of the written laws together with all the Halakot derived from them, as is done in the Midrash-form, should be such dry mechanical work of the memory, and so repulsive to the intelligent student. One would be inclined to think that the study of the Halakot in the abstract Mishnah-form, especially when not arranged systematically, would indeed be a far more mechanical work and far more tiresome for the student. Again, according to Frankel, it was the alleged lack of inner logical connexion between the single Halakot

והנה כבר כתבנו בפרק הקודם הלימוד ע"פ הענינים התחיל סוף ²⁰
 ימי הסופרים, אבל בלתי ספק עברו ימים רבים טרם נאספו כל השייכים
 אל ענין אחד תחת דגל אחד, והרבה פעמים בעסקם בענין זה נמשכו
 מענין לענין ומהלכה להלכה . . . ור"ע החל לסדר ההלכות הישנות על
 מכוון ונבולם.

which made the Midrash-form inadequate for teaching purposes. However, this absence of inner logical connexion is merely alleged by Frankel, but not proved. If we should even grant that in the Midrash-form the Halakot were not always logically connected and coherently presented, the earlier Mishnah certainly did not remedy this evil. The earlier Mishnah collections were characterized by the most arbitrary modes of arrangement. Halakot bearing upon different themes and altogether unrelated in subject-matter were often grouped together under artificial formulas. Examples of these earlier modes of arrangement have been preserved even in the present form of our Mishnah as, for instance, in the so-called Number-Mishnahs or the En-ben-Mishnahs. The Midrash-form certainly established a better connexion between the individual Halakot than did these earlier arrangements of the Mishnah. The mere fact that many Halakot belong to one and the same chapter or are grouped around one and the same passage of the Scriptures, establishes a better connexion between them than the accident that they can all be presented under one formula.

Aside from all these arguments, the fundamental position of Frankel can hardly be maintained. In the time of the last group of the Soferim, the halakic material could not have grown to such an extent as to make it impossible to use the Midrash-form and necessitate the innovation of a new form of teaching. The mere volume of the halakic material could by no means have brought about this change of form. This is evident from the fact that our halakic Midrashim, Sifra, Sifre, and Mekilta, present in Midrash-form a mass of halakic material far greater in volume than was extant in the days of the Soferim. Thus we see

that all the reasons which Frankel gives for the introduction of the Mishnah-form are insufficient and could not have been the cause of the innovation.

In conclusion, Frankel's admission that the teachers continued to use the Midrash-form even after the introduction of the Mishnah-form²¹ is the strongest refutation of his own theory. If the Midrash-form had so many disadvantages, if it was both tiresome for the student and inadequate for presenting the Halakot systematically, why was it not altogether abandoned? How did the new form obviate the evils of the old form if the latter continued in use?

The theory propounded by Weiss in his *Mabo la-Mekilta*, pp. iv and v, and in his *Dor*, I, p. 66, is somewhat of an improvement upon the ideas of Frankel. Like Frankel, he believes that the Mishnah-form was introduced by the later Soferim, and that the reason for this change was the large increase of halakic material. He avoids two of the mistakes that Frankel made. In the first place, he does not confuse the innovation of teaching detached Halakot in the form of Mishnah with the arrangement of the latter according to subjects. Nor does he assume that the Midrash-form continued in use, after the Mishnah-form was introduced. According to Weiss, the Midrash-form was abandoned because it proved inadequate. It was hard for the student to remember the great mass of Halakot that existed at that time, when taught in the Midrash-form. The teachers, therefore, felt the need of inventing another form which would help the

²¹ *Op. cit.*, p. 7, he says : ודע כי אף שבידורו להם דרך לעצמם בענין : הלכה לא עזבו דרך הראשונים לנמרי אבל חיברו גם הם מאמרים למקרא.

memory retain the increased number of halakic teachings. This help for the memory they found in separating the Halakot from their scriptural bases and in expressing them in short, concise phraseology, and in arranging them according to a number-formula. The saying of Simon the Just, 'The world rests upon *three* things, &c.' (Abot I, 2), and the three Halakot mentioned in Eduyot VIII, 4, which according to Weiss are soferic Halakot, merely reported by Jose ben Joezer, are cited by Weiss in support of his theory that the Soferim taught detached Halakot expressed in concise terms and arranged according to number formulas. Weiss (*Mabo la-Mekilta*, p. v, note 7) admits, however, that the innovation was unsuccessful. The teachers, he tells us, soon found that the Mishnah-form, although superior to the Midrash, in being more easily memorized, had many other disadvantages. As a result, they had to return to the older form of the Midrash after they had abandoned it for a time.²²

This admission of Weiss that the advantages expected

²² In this assumption, that the Midrash-form had for a long time been abandoned and supplanted by the Mishnah, and that later on objections to the Mishnah-form caused a return to the Midrash, Weiss is followed by Oppenheim ('Ha-Zugot we-ha-Eshkolot' in *Hashahar*, VII, pp. 114 and 116), and by Bassfreund (see above, note 15). It is strange that while these scholars cannot account satisfactorily for one change that really took place, namely, from the exclusive use of the Midrash to the admission of the Mishnah-form, they assume another change which never took place, namely, a return from a supposed temporary exclusive use of the Mishnah to the old Midrash. We have already seen that the Mishnah-form was never in exclusive use, for the Midrash continued to be used side by side with it. Consequently there could have been no return from Mishnah to Midrash. But we shall see that the very reason which Weiss, Oppenheim, and Bassfreund give for the return to the Midrash, namely, the opposition of the Sadducees, was rather the cause for the further departure from the Midrash-form and the extension of the use of the Mishnah-form (see below, notes 72 and 73).

from the new form were not realized, is in itself a strong argument against his theory. Further, we have seen above that the necessity for aiding the memory could not have been the reason for introducing the Mishnah-form. The words of the scriptural text with which the Halakot were connected in the Midrash-form offered sufficient help to the memory. We have also seen above that in the days of the Soferim the halakic material was not so large as to necessitate new forms and arrangements. The Soferim never gave their teachings in any other form but in the Midrash, namely, as interpretations and additions to the written laws. They never arranged them in any other way except in the order of the scriptural passages to which they belonged. The two passages, cited by Weiss, do not refute this statement. The saying of Simon the Just in Abot is not a halakic teaching but a maxim of the same character as the other wisdom literature of that time. We can draw no conclusions from it as to the form of halakic teachings of that day. As for the three Halakot mentioned in Eduyot, these will later be shown to have been the decisions of Jose ben Joezer himself. Consequently they do not prove anything concerning the form of halakic teaching used by the Soferim.

Oppenheim²³ offers a theory that is in reality but a combination of the views examined above. However, he makes a very correct observation concerning the date of the innovation. According to Oppenheim, the Mishnah-form was first introduced during or immediately after the Maccabean uprising. As a result of the persecutions incident to the Maccabean revolution, the study of the

²³ 'Tolédot Ha-Mishnah' in *Beth Talmud*, II, p. 145, and also in his 'Ha-Zugot we-ha-Eshkolot' in *Hashaḥar*, VII, pp. 114-15.

law was neglected and the knowledge of it decreased. The teachers, therefore, decided to separate the Halakot from their scriptural bases and to teach them independently, in order to save them from oblivion ('Toledot ha-Mishnah', in *Beth Talmud*, II, p. 145). They chose this form either because they thought that in this form it would be easier for the student to remember the Halakot, or because they, the teachers themselves, no longer remembered the scriptural bases for many Halakot.

The first of these two reasons is identical with the one given by Frankel and by Weiss, which has been found insufficient. The second one is similar to the one given in Hoffmann's second theory, and, as we have seen, is not plausible. For, if they had not previously studied Mishnah but received the Halakot only together with their scriptural bases, it is hardly possible that the teachers could forget the latter and yet remember the former. The remembered Halakot would have recalled to them the scriptural passages in connexion with which they were received.

It seems that Oppenheim himself felt that neither his own nor Frankel's nor Weiss's theory was sufficient to solve the problem. He therefore offered another solution of the problem, and this is practically a denial of the fact that there is a problem. After stating that the Soferim taught in the Midrash-form and those who followed them introduced the new form of abstract Halakot, that is Mishnah, he contradicts himself by adding the following remark:²⁴ 'But in my opinion there is no doubt that the Soferim who taught [the Halakah] as a commentary on the Scriptures

²⁴ ולדעתי אין כל ספק כי הסופרים אשר אחזו בפירוש המקראות גם כן 'Ha-Zugot we ha-Eshkolot', *l.c.*, p. 114.

[i.e. Midrash] also taught independent Halakot.' He then proceeds to prove that the Soferim had independent or abstract Halakot in the form of Mishnah.²⁵ According to this statement there is no problem at all. We need not account for any change in the form of teaching Halakah or explain the reasons for the innovation of the Mishnah, for there was no change and no innovation. The two forms, Midrash and Mishnah, were evidently used together from the earliest times, the Midrash possibly to a larger extent than the Mishnah. This would indeed be the best solution of the problem and would remove all difficulties. The only obstacle in the way of its adoption is that it is contradicted by all historic reports. It is against the tradition that in earlier times all the teachings of the Halakah were given in the Midrash-form only. This tradition, we have seen, is indicated in the discussion of Jose and Hezekiah mentioned in the Palestinian Talmud (Moed kaṭan) and is expressly mentioned by Sherira Gaon. It is also out of harmony with the generally accepted opinion that the

²⁵ This is also the stand taken by Halevi who goes even further and maintains (*Doroth ha-Rishonim*, I, chap. xiv, pp. 204 ff.) that in the main our Mishnah had already been composed and arranged by the Soferim, but he does not prove his statements. At the most, his arguments could only prove that there had been many Halakot and decisions in the days of the Soferim, and that the earliest Tannaim in our Mishnah in their discussions seek to define and explain these older Halakot and decisions. But it does not follow that these Halakot and decisions were already in the days of the Soferim composed in the Mishnah-form. These Halakot and decisions were originally given in the Midrash-form, as definitions or interpretations of written laws. The later teachers, that is, the earlier Tannaim, discussed and commented upon these decisions and Halakot of their predecessors which they had before them in Midrash-form. Later on, when these decisions and Halakot became separated from the Midrash, they were arranged in the Mishnah-collections as independent Halakot, together with all the comments and explanations given to them by the Tannaim, and in this form they are also found contained in our Mishnah.

Soferim, as the name implies, imparted all their teachings only in connexion with the written book of the Law. It is, further, against an absolutely reliable report in the Babylonian Talmud which, as we shall see, tells us not only that the older form of teaching the Halakah was the Midrash, but also gives us the period of time during which it was in exclusive use.

Thus we see that all these theories examined above have not succeeded in finding a real solution for our problem. None of the theories have given the exact time or the real cause for the introduction of the Mishnah-form.

Probably the strangest feature of the problem is the silence of the talmudic literature about this important innovation. This silence is all the more remarkable when we come to realize that this was not merely a change in form, but an innovation that had great influence upon the development of the Halakah and had great bearing upon the validity of its authority.

The theory proposed in this essay offers what appears to us to be a satisfactory solution for this many-sided problem. In the first place it determines the exact time when the innovation of teaching independent Halakot was introduced. In the second place it describes the conditions that compelled the teachers to make so radical a change. And finally it explains why no explicit report is preserved in talmudic sources regarding this great development in the teachings of the Halakah. This theory I shall now propound.

(To be continued.)



IMMANUEL OF ROME AND OTHER POETS ON THE JEWISH CREED

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ZUNZ in his *Literaturgeschichte der synagogalen Poesie* (p. 507) states that the author of the *Yigdal* hymn appears to have made use of some expressions contained in a similar poem by Immanuel of Rome. Through the influence of Luzzatto it has become customary to attribute the authorship of the *Yigdal* to a certain Daniel b. Judah Dayyān, and Zunz agreed to this without further criticism. As I have shown elsewhere,¹ Luzzatto's authority only speaks of the arrangement of the *Yigdal* (in the Prayer Book), but says nothing about its composition. The literary relation between the two poems is this that Daniel did not make use of expressions found in the other poem, but borrowed so largely that he laid himself open to the charge of unabashed plagiarism. I, therefore, came to the conclusion that not Daniel, but Immanuel himself is the author of the *Yigdal*. His name is interwoven in the larger poem (line 12), but the smaller one offered so little scope for a similar insertion that he succeeded only with the sacrifice of one letter (לַעֲמֹ אֵל, l. 8).

The *Yigdal* represents one of history's little ironies. If we consider the ill repute in which Immanuel was held by many of his contemporaries, and how he shocked the

¹ *Curiosities of Jewish Literature*, p. 14.

feelings of pious Rabbis by the levity of his verses, we must marvel at the unrivalled popularity gained by the *Yigdal*. It is but an abstract from his larger poem, intended to condense the Thirteen Articles in a metrical ode of as many lines. Whether the author composed it with any liturgical intentions, or as a mere exhibition of his skill is uncertain. The fact that he left about a dozen liturgical poems is sufficient evidence to show that his muse was not entirely given to frivolity.² In the colophon the copyist of the poem, a certain Benjamin Kohen, pupil of Moses Zakuth, styles him 'the righteous and wise', titles which he scarcely would have given him, had he shared the severe opinion of earlier generations. Moreover the fact that the poem, as reproduced hereinafter, is taken from a volume containing prayers, shows that the copyist was convinced of its liturgical character.

I. The poem in question is taken from a MS. of the Montefiore Collection³ dating from the seventeenth century, and probably written in Leghorn. The first nineteen lines contain the introduction. Line 8 reproduces, in poetic form, the verse Prov. 25. 11, which is quoted in the Introduction to Maimonides' *Mōrēh*. Line 10 gives the number (72) of the lines of the poem, and the name of the poet is to be found in line 12. The metre is *tro*

² Perhaps it was for this reason that the author inserted what was originally an independent poetical production in his *Maḥberot*. Proof of its independent existence lies in the fact that it was copied separately. The prefatory words given to it in the *Maḥberot* show that it is but slightly connected with the bulk of the chapter, and was probably put there for want of a better place. The following reproduction is necessary not only to bring out clearly its relation to the *Yigdal*, but chiefly for the numerous variations from the printed text.

³ See my *Descriptive Catalogue*, No. 253, j, a correct 'poem' for 'Riddles'.

tenū'ōt, yātēd, two tenū'ōt, yātēd, two tenū'ōt in each half-line.⁴ The passages which occur in the *Yigdal* are, in the following reproduction, overlined.

II. With a subject so popular as the Maimonidian Articles of Creed it is not to be wondered at that Immanuel's work soon found imitators. The following collection on the same subject neither claims completeness, nor has it in every instance been possible to establish the identity of the poet. The first in the list is Judah b. Solomon b. Nathan. His name is mentioned by Zunz (p. 509) who seems to have been in possession of a copy of his poem. Another copy I found in a MS. Prayer Book of the Spanish rite, dating from the middle of the fifteenth century.⁵ The poem consists of thirteen lines. The first two, being introductory, state that the teachings of the poem are binding upon each Israelite. Its direct dependence on the *Mōrēh* is made clear by line 8, which speaks of the four crowns placed on the head of Moses, distinguishing him from other prophets.⁶ The concluding line again asserts that only he who believes in these articles can claim the name of Jew. The metre is *yātēd, two tenū'ōt, yātēd, two tenū'ōt, yātēd, tenū'ah*.

III. The next two poems bear the common name of Joseph, but it is as yet impossible to ascertain whether the authors were two different persons or not. The one consists of sixteen lines with an epilogue of two lines containing

⁴ Corresponding to the Arabic *kāmil*, the last foot being shortened.

⁵ Belonging to Jews' College, London. I take this opportunity of stating that the late Dr. Neubauer's *Catalogue of the Hebrew MSS. in the Jews' College, London*, Oxford, 1886, does not refer to the above institution, but to the Beth Hamidrash, Mulberry Street, E.

⁶ See Munk, *Le Guide*, II, p. 277, where all further references are to be found.

the name of the author.⁷ The poem is not mentioned by Zunz, nor was I able to find any trace of it elsewhere. Its distinguishing feature lies in the fact that each line begins with the word *אמנתי*. The lines 1, 15, and 16 are of general religious character, so that each of the remaining ones contains one article of belief. The four crowns of Moses are alluded to in line 8. The metre is the same as in No. II, but the epilogue is written in *two tenū'ōt, yātēd, two tenū'ōt, yātēd, three tenū'ōt*, the first hemistich being somewhat irregular. The last three words form a free reproduction of the passage Ps. 81. 6, but the last word must be read, according to the metre, *שמי*. Since Joseph is the name of the compiler of the MS. from which it is borrowed, we might conjecture him to be also the author of the poem.

IV. The second poem handed down under the name of Joseph is taken from Cod. Brit. Mus. Add. fol. 98r^o, and is mentioned by Zunz (p. 569). It consists of *twenty-seven* lines. It seems to be an enlarged recension of the *Yigdal*, from which it borrowed not only the rhyme but also several phrases, e.g. *קרמון לבל נוצר* (l. 5), *צופה ומביט* (l. 9), *נאמן בכל ביתו* (l. 10), *תורת אמת נתן* (l. 11), *עם סגולתו* (l. 13). The metre is *two tenū'ōt, yātēd, two tenū'ōt* in each hemistich.⁸

V. The next poem is by an unknown author, and is not mentioned by Zunz. It consists of *twenty-six* lines. Line 14 speaks of Moses' fourfold eminence over all other prophets. The metre is *two tenū'ōt, yātēd*, three times in the first hemistich, whilst in the second the last foot consists of *three tenū'ōt*.

VI. Yekuthiel b. Moses of Rome is the author of

⁷ The name is also alluded to in line 15.

⁸ Corresponding to Arabic *basīf*.

a liturgical work, entitled ספר התדיר. It contains an elaborate poem on the Creed, consisting of *sixteen* lines, probably by the same author. The first two lines are introductory, whilst the last one forms an epilogue. Each line, containing one article of belief, is broken up into four parts, the first three of which have an internal rhyme, whilst the last ones have the general rhyme. The metre is *yātēd*, *four tenūōt* for each quarter. The contents of each line are further indicated by a cue attached to it on the margin. The 'four lights' of Moses are mentioned in line 9. The poem is not mentioned by Zunz.

VII. An attempt to condense the *Yigdal* into two lines of the same metre as the complete poem is to be found in Cod. Montefiore 318. This little poem resembles in several respects one communicated by Zunz, p. 506.

VIII. Another couplet of the same contents is attached to No. IV, but the text is in such an unsatisfactory condition that its poetic form cannot be ascertained.

IX. A רהוטה⁹ combining the thirteen divine attributes with the thirteen articles of the Creed was composed by Aḳiba b. Judah, who was probably a native of North Africa. This Piyyuṭ is of thoroughly liturgical character. It has no metre, but each paragraph is divided into four rhyming sections.

In the following reproduction the passages alluding to the divine attributes are marked by dots, whilst those containing the articles are overlined.

Zunz (p. 539) quotes the first and last hemistichs of a poem of five strophes on the Creed, which he attributes to a certain Abraham.

Still to be mentioned is a poem on the Creed by Meir

⁹ Zunz, p. 68.

al Dubbi, which is printed at the end of his philosophical work שבילי האמונה. In the MS. Montefiore 48 (fol. 5 v^o) the same poem is attributed to Joseph Chiquitilla (נאקטילא), but this is evidently due to an error of the copyist.

I

Cod. Montef. H. 29, fol. 83 v^o.

חרוז מיוקד על הי"נ עיקרים

אפתח בכינור על עלומות ישיר	אשים יסוד הדת רפידתו
בנוי לרתלפיות בטורי בין	על הררי קודש יסודתו
לגל תבונות רום ברוב דעה	הולך וסובב על נקודתו
בו כוכבי חכמה יאירון על	תשבין תבונתו וחידתו
5 אתבוש לראשו מגבעות שכל	סוד האמון חשב אפורתו
אשים סביבו תוכחות מוסר	אף זר זהב יזקל למסגרתו
בו האמונה תהיה שורה	החן והעדק גדולתו
על אפניו דבור ותפוחי	זהב סגורים הם במשיבתו
יחיו לריחו שוכני עפר	עת יזלו בשמי ערונתו
10 טוריו שנים הם [על-]שבעים	על רצפת כבוד מנוחתו
בו מוסדות הדת שלש עשרה	הנם יצוקים עם יצוקתו
אחליי ותחנוני יחי עמ	נאל ורוחו באריגתו
קרבו פתאים לחמו לחמי	התבוננו שירי ותוכחתו
השיר יהי לכם כליל התק	דש חג ושמחת לב כשמהרתו
15 כי מוצאו הוא ימצאם חיים	אף חוטא חומס יחידתו
עמו הלא עצה ותושיה	בו תוכחות חיים להורדתו
תתני בלבי לחקור סוד אל	אתבוננה העם גבורתו
עד כי אשר באתי למקדשו	אשכיל ואבנים לאחריתו
ואחשבה ואדעה כי הוא	עלית מציאות כל וסבתו
20 נמצא אבל לא מזמן מוגבל	רוכב שמי קדם בנאותו
מי בשחקים יערוך אליו	ידמה לשם קדשו ותפארתו

נקרא שמו שדי ומסתפק
 יבטל מציאות כל אשר נמצא
 אם יעלה על לב אנוש בטול
 לא נאמין עם זה ולא יושכל²⁵
 אחד ויהודו מאד נעלם
 אחד ולא המין אשר יכלול
 אחד ולא בנוף אשר נחלק
 לא נוף ולא כה בתוך הגוף
 כל תארים תמצא יתואר בס'³⁰
 קדמון ואין נמצא בקדמותו
 לא נמצא מצוי בשם קדמון
 אדון לכל נמצא אשר המציא
 כל המצעים מלבדו הם
 חשים ומונבלים ומוכרחים³⁵
 רשיון וחפץ לא יהי בהם
 לכן אשר יפנה לזולתו
 צופה ויודע סתרינו
 ארץ ושמים וצבאותם
 גומל לאיש צדיק כצדקתו⁴⁰
 חכין ופעל זררי חכמה
 השקוף באור שכל וזרח על
 נביא כמשה לא קדמהו
 אם יהיה נביא תהי על יד
 אכן נבואת המחוקק פרה⁴⁵
 נביא נבואה לא תבואהו
 או בהקיצו אם יהי נביא
 אכן נבואת נאמן בית
 כל איש יהי נביא אזי יחס
 אכן נבואת נאמן בית⁵⁰

כי לא יהי נצרך לזולתו
 אם נחשוב בטול מציאותו
 זה המציאות מתבוננתו
 חסרון בצד מה משלימותו
 מי יעמוד על סוד אמתו
 תחתיו פרטים באודותו
 הוא לחלקים בחלוקתו
 אכן מיוחד הוא באחדותו
 הם תארים מורים פעולתו
 ראשון ואין ראשית לראשיתו
 אם נעריכו לקדמותו
 שופט יצוריו באדונותו
 מתפעלים סרים למשמעתו
 הם לעבוד איש איש עבודתו
 אכן רצונו עם נורתו
 ימרה רצון קונו ומצותו
 סועד יצוריו באלוהותו
 לא יעזוב אותם לנבחרתו
 ישיב לאיש רשע כרשעתו
 שפע נבואת עם סגולתו
 משה נביאו נאמן בירתו
 גם אחריו לא קם כמעלתו
 מלאך ואמצעי נבואתו
 אל פה ומביט את תמונתו
 דק בחלום ליל לחלשותו
 יתבטלו חושיו בשנתו
 יומם והוא עומד בעמדתו
 לבו ויתרופף לחרדתו
 עליו והוא נצב בחזקתו

כל הנביאים נבאים המה
 אכן נבואת המחוקק היא
 תורת אמת היתה במו פיהו
 תורה אשר היא תעמוד נצח
 55 ובבוא לקין ימין משיחנו
 שפה ברורה יהפוך אל עם
 ישראלו אף יקדו עמים
 ישיב נוה צדק והר קודש
 יציין ופרח יעקב עברו
 60 אל תראו הלכי קדורנית
 שובו לבצרון אסירי ה
 ולכו חזו בין עובדי אל חי
 יום יהיו זדים וכל עושי
 יהיו בקש וכמוין ליום הבא
 65 יזרח אליכם אז יריאי אל
 יגדל וישתבח אדון עולם
 הצור נצחנו נעימותו
 יום נכספו לבורת להגדילו
 תשוב תהלת הלשונות אז
 70 ובעת אשר ישתדלו לבורת
 תשוב ידיעתם אלי סכלות
 לכן בשירי אשמרה אל פי
 כרצון אלהים* חי ודברתו
 תמיד בכל עתים וברצותו
 וברית אלהים היתה ארתו
 וברית לעד עולם עמידתו
 לא יחליף דת אל ואמרתו
 לא ידעו אל חי וסוד דתו
 אז לרהום רגלי שכינתו
 ציון כליל יופי לקדמתו
 יחיו ויקומו נבלתו
 השומרים חוקיו ומשמרתו
 תקוה מחכי קין נאולתו
 ובין אשר לא יעבוד ארתו
 רשעה הדופים אז בעברתו
 ותרלהטם אשו ולבתו
 שמש צדקה אור ישוערתו
 ברוך עדי עד שם קדושתו
 הנעלם סודו ועצמותו
 ולרוממו איש איש כברכתו
 ליאות וקצור מגדולתו
 לחקור יסוד סודו ומהותו
 תקצר ידיהם מידערתו
 מחסום ודומיה תהלתו
 פעולת הצדיק החכם עמנואל ב"ר שלמה מרומא

* MS. ולהים.

II

(Cod. Jew. Coll.) Poem on the Thirteen Articles of Creed
by Judah b. Solomon b. Nathan.

שלשה עשר עקרים

אנודה זו ואלו הקשרים	אינר כפז ומוזב יקרים
לחבר אהלי יעקב ומשכן	בני עליון וישראל חברים
תחלתם לרעה כי אלהים	מציאותו מקור כל היצורים
והוא אחד ולא נשאר אחרים	ולא נשם ולא בעל תארים
5 וקדם כל ברואים הוא לבדו	ואליו העבודה לא לזרים
קדושים נבאו מהוד כבודו	ועל כלם בנו עמרם להרים
באין מלאך ולא שרף וחשמל	ומהקין בלא בטול יצורים
בלא בר ננס תמיד ועם זה	חכי נכתר בארבעה כתרים
ומפי עליון תורה נרונה	ורק משה כמשיב הדברים
10 והיא לעד באין חלוק ושנוי	ויודע אל גלויים גם סתרים
ועל כל מעשה יש דין וחשבון	ובן דוד יקבין רפזורים
ולפיתים תתיה אחרי מות	ורשוכנה נשמות לפגרים
והמאמין באלה איש יהודי	ושמ(ש)ו יזהיר כוזהר המאורים*

תמו שלשה עשר עקרים

ושמשו יעריב זהר מאורים * Zunz

III

Cod. Montef. H. 48, fol. 1 v°.

אמונתי בלבך שים ותשיג	בנן עדן אכול בפרי מגדיו
אמונתי באל נמצא וממציא	לכל עלול ועלר בלעדיו
אמונתי באחדותו פשוטה	ולא אחד במספר לגרודיו
אמונתי אשר לא לו יתואר	כתואר גוף ולא ממעמדיו
5 אמונתי בקדמותו ונצחו	ושמים ותבל הם מעידיו

מנמת כל יצור אליו ועדיו	אמונתי אשר ראוי לעבדו
והוא נגלה בחזון לחסידיו	אמונתי בהשפיעו נביאיו
בארבע נבדל על כל ידידיו	אמונתי בנן עמרם בחירו
ברר סיני נרתנו אל עבדיו	אמונתי בדת האל וחוקו
בלי שנוי בצד מכל צדדיו	10 אמונתי אשר לעד יקויים
ורעתו רז בני אדם וסודיו	אמונתי בהשניחו בראיו
והענישו למרשיעיו ומורדיו	אמונתי בנמלו טוב לעושה
לנוף ילביש בגדי יקר חמודיו	אמונתי אשר מתים יחיה
בנו דור לקבץ נפרדיו	אמונתי אשר ישלח לערתו
ברכות די אלהים בחסידיו	15 אמונתי אלי מאמין יהוסף
ומיי יכונן מצעדיו	אמונתי בעזרו יחיה אל

דרך ונתיב לתשועת 'נפשות
שלוש ועשר הם יסודות למו
פנת יסוד מאמין להשיג יוצא
לזאת לעדות ביהוסף שמו

IV

Brit. Mus. Add. 1883I, fol. 98 v°.

חרוזות נטויות על שלשה עשר עקרים

אתם בני עליון שונים באהבתו	התבוננו וראו נוחלים בתורתו
נמצא מתוויב יש סבת לכל מצוי	אפשר בעצמותו ראוי בעלתו
אחד לבדו לא כשאר אחדים הוא	כי אין אחדותו תאר למהותו
לא גוף ולא כח תוך גוף מציאותו	שכל גדלתו נבדל כישותו
5 קדמון לכל נוצר לא סר ולא יסור	עולם וכל טובו ברא בחכמתו
הן זה אלהינו על כן נקוה לו	אך לא לזולתו לעבוד עבדתו
צופה ומביט על כל חי למיניהו	אדם לפי שכלו יושגה למעלתו
בנמול ועונש כן תכל ויושביה	לחתר לאיש כפי דרכי מעלתו
יחול כבודו על נביא לכב חכמה	חופף עלי שכלו קו אור זריחתו
10 משה בחירו אב היה לכל נביא	מבחר עבדיו הוא נאמן בכל ביתו
תורת אמת נתן על יד מחוקק בה	חקים ומשפטים אל עם סגולתו

גם אין להמיר מי מביא תמורתו
 צמח לקץ ימים תהיה גאולתו
 צדיק אשר חי הוא נקרא במיתתו
 אותם לכל עברי להיות יסודתו
 קדוש אשר סוגל ביקר אמונתו
 תמיד ואראה אור עם ישועתו

היא חק לישראל נכון לבל יוסיף
 גואל ימדר אל עמו ויצמיה
 נאמן להחיות ישן באדמתו
 15 משה בנו מימון מצא בטוב טעם
 אלה שלש עשרה שרשי אמונת עם
 הנה אני יוסף אל' אקדם (?) במ

V

Cod. Montef. H. 101, fol. 60 r^o.

באן מתחילין הי"ג עקרים

תרע אמת נמצא ועלת אל מצי
 אם נמצא בלתו יהי אֵין וכל
 בעזוז כבוד זכרו יהי נמצא לבר
 יחיד ואין נמצא כאחדותו במין
 5 גם לא בפשוט ובמשג מחשב
 מדות באות רחקו אמת מנהו מאד
 קרמון וכל בלתו מתורש יהיה לאת
 גלגל שכליים והיסודות אמת
 על פי יי כל פעולתם בכנ
 10 נמצא במין האנוש נפשות קבלו
 ידבק אלי פועל ושפע נכבר
 אל מי תרמו מחזה עֵנָה והוא
 יביט תמונת צור במחזה זך ופה
 מבחר יצירת האנושי הוא באין
 15 נשמו בלי נמנע* תבונת שכלו
 כל אמרות [ה]אל צרופות משמי
 האומרים אות זה לחנם נכתב
 אחרת בלי מניע ותוספת אין
 עיני אלהים הם פקוחות על נתיב

אות יעמוד לעד והמה עוברים
 גלגל יהי נעדר ימושון הרים
 תועפות יכולת לא באין מחקרים
 בסוף ובמורכב הכי נעדרים
 ימין יפקרו כמו מסערים
 אם הם בעינים או יהיו במקרים
 לו נאזה מהלל והוד כל שירים
 חפצם רצון האל ואל לאשרים
 לו נאזה לעבוד לכל היצורים
 צורות מאוד שכל ברעת זוהרים
 יפרץ נבואות מחזה לנברים
 אדון ואב על כל בשם אל דוברים
 אל פה ידבר בו דברים ברים
 מסך והשיג מעלת הוד עירים
 על כל נביאים ראש בארבע הרים
 שחק אמת נתנו בקול ודברים
 את פושעים נמנה ואת הכופרים
 דת נשתון נתנה בטורים
 דרכי בני אדם צעדיו סופרים

20 ישיב בצדקתו לצדיק בצרור חיים צרור נפשו לדורי דורים
 אם ימרה פיהו יקלעהו בכף קלע וכל אויביו וביקר כרים
 אם יתמהמה משיה אל חכה ולו יקתה לאום נפזרים
 כל שוכני עפר הלא יקיצו וי רננו בעת פתחו אלי מקברים
 שרשי אמת אלה בלבך תטעי יבחנו בהם עדת העברים
 25 מדות שלש עשרה למולם זכרי כמה פקודיהם כמו עקרים
 שימי מסלות אל בלבך לך יהו סלה ותעלה בו לעיר גבורים
 אם יחסר אחת אשר בו תטעי תחשבי מכת עדת הנכרים

* MS. ומנע.

VI

B. M. Harley 5686, fol. 150 r^o.

זהו השיר מרכבת המשנה ליסודי התורה רמזים במחברת הטנא

משוך נא אל חסדך תנה לי מהורך וגל עיני עבדך בביאור עקרים אלו הם י"ג
 שלש עשרה הנם יסוד דת קנינם ושיר זה בעינם במספר נזכרים עקרים
 הלא עז נם עצה לא לאמת נמצא והמציא כל מוצא בדרכי הישרים נמצא
 מאד ייחור נעלם למלך העולם באחד אל עולם אלהי העברים אחד
 5 בלא גוף או רמיון לשם רום לו חביון ובצווי עליון פעולותיו מורים בלי גוף
 לכל נברא קדמון בטרם כל המון וחכמה לו אמון בראש כל נוצרים קדמון
 לצורות רום אדון וגלגלים ידון ואת אנשי מדון למשמעתו סרים אדון
 נבואות הבאות לרואי המראות להמציא ישועות בחיריו אל הרים נביא
 ואולם בן עמרם עלי נביא הורם בשכלו משה רם בארבעה אורים משה
 10 ועל ידי דתו נתנה בבריתו לאום סגולתו לאשר העברים תורה v^o
 ואין שנוי צורה אלי זאת התורה ערוכה ומסורה לדורי כל דורים בלי חלוק
 סתרינו צופה בחזק ובפרפה שבורי לב רופא לחזקו נעצרים צופה
 לצדיק טוב נומל כאב לבן חומל ורשע רע עמל יהושלך אל ורים יודע
 לעמו ישלח אל משיחנו נוהל נפוצות ישראל יקבץ נפזרים משיח
 15 יחיה את מיתיו ישני עפרותיו מחכי אמרותיו ויחיו נגזרים חיים
 ועל כל נודה אל לנפשנו נוהל אלהי ישראל יפאר לדורים ע"ה

VII

Cod. Montef. 318, fol. 102 v°.

נמצא באחד אין צורה לקדמותו אעבור ובנבואת משה ותורתו
נצחית ומשניה הפקיד למשיה עת יחליף כח הנוף ונשמרתו

VIII

B. M. Add. 18831, fol. 98 v°.

מִצָּא נבדל אחד ומקדים נביא למשה עברו
בתורה הנצחית נמולו רשניחו וינאל חייהו

IX

Cod. Montef. H. 145, fol. 47 v°.

רהוטה מיוסדת על דרך י"ג מדות וי"ג עקרים שכתב הרמב"ם ז"ל
ובנאה ר' עקיבא נ' אלסיך נר"ו בר יהודה נ"ע
אתה יי אלהי ארוממן אהללך במושב וקנים יי, נמצא מציאות שלמה לעין כל עיני.
הלא דבריו באש להמוני בסיני, אנכי אנכי יי
נאור אחד מאין שני אחרות שלימה בלי כחד יי, לא כאחד כללי ופרטי ומורכב אל יחד,
על כן נזכיר שמך יחוד חי העולמים יחד, יי אלהינו יי אחד
יוצר כל צורה ותבנית מכל שוכן אריאל, אלי גשם ודמות ושכוי לא ישיגו פודה וגואל.
ראו עתה כי גדול בקרבנו וקדוש ישראל, ואל מי תדמיון אל
וישבי שמי קדם וְקָרְנוּ בזכרון עמך, רְחוּם, קדמון לכל אתה ושנותיך לא יתמו וימין.
מעונה אלהי קדם מעולם הוא שמך, מהר יקדמונו רחמין.
עברו את יי א' בשמחה אלהי ישעינו, הֲנֵן יחוננו ויברכנו ולא נפרוש לאל זר כפינו,
על דבר כבוד שם מלכנו חלו נא פני אל ויחננו
קרוב לכל קוראיו במראה תתודע לגביאך וציריך, אך אפֿים רשעים כאמרתך,
הארך קצץ אז דברת בחוון לחסידך, בסכותך עליהם כפך מנשמת רוח אפֿיך.
במראה ולא בהידות יי נראה למשה בחילו, זֶה חֶסֶד הפלא לו חסד כי לא מלבד אך נתן צדק

לפעלו. א"כ לנביאים נאמן הוא בכל ביתו ובהיכלו. כי הפליא יי חסדו לו
 בִּדְ לִבְבִּי פֶרַח מִיִּמִּינִי אִישׁ רֵחַ אִמַּת לִיעֶקֶב תֵּתֵן נֹחַל הַיּוֹם דַּת עֲנִיו
 רועהו. הַשִּׁיג בִּנְבוּאָה כֹּאשֶׁר יִדְבֹר אִישׁ אֶל רֵעֵהוּ. תּוֹרַת אִמַּת הִוְתָּה בְּפִיהוּ
 יֵה לְנֶצַח תּוֹרָה תְּמִימָה הִנְחַלְתָּנִי בִּמְקַהֲלוֹת נֹצֵר חֶסֶד לְאַלְפִים תְּצוֹר שְׁלוֹם לִי.
 כֵּן דִּבַּרְתָּ לְמַמְשִׁלוֹת לִפְנֵי יְרַח דּוֹר דּוֹרִים חֲסָדֵי חֻקּוֹת לְאַלְפִים לְאוֹהֲבֵי וּלְשׂוֹמְרֵי
 מִצְוֹתֶי

הֵאֵל מִמְּכּוֹן יִשְׁבְּתוּ מִשְׁנִיחַ אֶת כָּל יוֹשְׁבֵי נְשִׂיָּה. נוֹשֵׂא עֹון סִלַּח נָא לַעֲוֹנֵי לֶךְ דּוּמִיָּה. תִּהְלֶה
 עֵינֶיךָ פְּקוּחוֹת לְתֵת לְאִישׁ כְּדַרְכֵּיו וּמִי יַעֲמֹד וּחִיָּה. אִם עֲוֹנוֹת תִּשְׁמַר יֵה
 וּמֶלֶךְ יי חֲסִיד אֶל תִּנְמֹלוֹת לְטוֹבָם וּלְרַעִים. וּפִשְׁעַ תַּחֲמוֹל לֹא לְאוֹהֲבֶיךָ וְנַחֵל
 עֲדֶיךָ תִּשְׁקֶם בְּךָ נוֹשְׁעִים. וּנְפִשׁוֹת] אֹיְבֶיךָ יִכְרְתוּן וְאִשׁ תּוֹקֵד בַּעֲדַת מְרַעִים בִּפְנֵי
 הָאֲנָשִׁים הַפְּזוּטִים

אֲנִלִּי אֲמַרִים אֲעֲמִיחַ קֶרֶן לְדוֹר אֲמ' יי הֵן אֲמוֹנְתִּיךָ וְחַטָּאָה אֶל תִּזְכּוֹר.
 עֲרַבְתִּי נָר לְמִשִּׁיחִי אֶף עֲזַרְתִּיךָ חֲכִי לוֹ כִּי בָא יָבוֹא מַחִיתִי כַּעַב פֶּשַׁעֶיךָ
 אֶף תִּמְכַּתִּיךָ וְכַעֲנֵן חַטָּאֲתִיךָ שׁוֹבָה. אֵלֵי כִי נִאֲלַתִּיךָ
 הֵן צַד(?) נִצַּב לְהַב יי לֶקֶן עַת יִכֵּן כִּסְאוֹ בַּשָּׁמַיִם. וְזָקָה יִזְקָה מַעֲוֹן
 יַחֲיוֹ מִתִּי נִבְלָתִי יִקְמוֹן יַחֲיִינוּ מִיּוֹמָיִם. יִקְמוֹן וְנַחֲיָה לִפְנֵינוּ אִם
 נִשְׁכַּבְהָ בֵּין יְשָׁפֵתִים. יָקוֹם בִּמְקוֹם קֹדֶשׁ נָקִי בָּפִים.

FURTHER DOCUMENTS ON THE BEN MEIR CONTROVERSY

BY A. GUILLAUME, Bodleian Library.

THE following letters form part of the miscellaneous fragments obtained from the Genizah at Cairo and now in the Bodleian Library. They are referenced as MS. Heb. d. 74.

They are of interest first because they bring to light further evidence as to the details of the well-known controversy between Ben Meir, the head of the Palestinian Academy, and his opponents Sa'adiah and Ben Zakkai the Exilarch; secondly, because ff. 28 and 31 complement the fragments IV and V first printed by Dr. Schechter in the *Jewish Quarterly Review* in October, 1901¹ (reprinted in *Saadyana*, pp. 15 ff.); fol. 29 is the missing half of *Saadyana*, p. 19 (IV b), and fol. 30 completes V a; thus,

Fragment A = *Saadyana*, pp. 16, 17 + MS. Heb. d. 74,
fol. 28 + *Saadyana*, p. 18.

Fragment B = MS. Heb. d. 74, fol. 29 + *Saadyana*,
p. 19.

Fragment C = *Saadyana*, p. 20 + MS. fol. 31.

Fragment D = *Saadyana*, p. 21 + MS. fol. 30.

Fragment E = MS. Heb. d. 74, fol. 27.

Fragment A is a letter from the Babylonian Academy addressed to Ben Meir. Sa'adiah had been called in by the Exilarch² to refute Ben Meir, whose efforts to reassert the supremacy of the Palestinian party were now assuming a dangerous form. The letter begins by admitting the

¹ *JQR.*, XIV, pp. 37 ff.

² Harkavy, *Studien und Mittheilungen*, V, pp. 212-21.

dependence of the earlier Babylonian doctors upon the calculations made in Palestine, but asserts emphatically that this is a practice of the past, adding that when the Jews of the גלות first began to fix the calendar for themselves the ראש ישיבה had made no protest, although it would have been quite possible for him to do so.

Ben Meir, by ignoring the rule of the דְּרֵי הַיִּת, known as מוֹלַד וְקֵץ, began Tishri of the year 4684 (1235 of Contracts and 855 after the destruction of the Temple), i.e. A.D. 923/4 on a Saturday, whilst with the Babylonians the first of Tishri was a Monday. This not only affected the preceding year (4683), but also necessitated the months of Marḥeshwan and Kislew 4682, being made חסרים instead of שלמים, and consequently the Passover would be celebrated on different days by the two schools.³

In this document both contentions of Ben Meir are swept aside by the assertion that if the Molad of Tishri falls even one חֶלֶק⁴ after midday that day cannot be allowed.

Fragment B. The beginning of this fragment was published by Dr. Schechter in *Saadyana*, and later by Bornstein in מאיר ובן מאיר. The latter scholar prints two other longer pieces which, he considers, are the work of the same author. For the present he must remain anonymous; Bornstein, however, has shown that there are strong reasons against a Babylonian authorship.⁵

Fragments C and D. These were written by Ben Meir himself, addressed as it seems to a wavering adherent.⁶ It

³ For a discussion of the whole question see A. Epstein, 'Querelle au sujet du calendrier', *REJ.*, XLII, pp. 173 ff.

⁴ 1,080 ḥalakim are the equivalent of an hour.

⁵ The writer is indebted to Prof. H. Malter of Philadelphia for the identification of this fragment.

⁶ Schechter, *JQR.*, XIV, p. 42.

is evident from line 16 (verso) of D that Ben Meir's correspondents had definitely thrown in their lot with the Babylonian school, and refused to countenance his reckoning of the Molad.

I have not been able to find any account of 'R. Musa who was slain in the ⁷עזרה by the Ḳaraites', but he may be identical with Musa of Tiflis, known also as Abu 'Imran Musa al-Za'farani, the founder of a new sect in the early part of the ninth century. Although Musa was not orthodox, he was hated by the genuine Ḳaraites, and his heresy was anathematized. One of the points of difference between them was the fixing of the new month, and for this reason Ben Meir, in his search for martyrs for the cause, may have been intentionally blind to Musa's better known irregularities.

Fragment E. The references are vague, and it is difficult to say with any degree of certainty to what this piece refers. The same scribe has penned all these documents, and the mild tone of this fragment indicates the earliest stage of the controversy (Dr. Malter thinks that this is a part of Sa'adiah's first letter to Ben Meir).

The black line in each case marks the limits and extent of the Oxford fragment.

⁷ Albiruni (*Chronology of Ancient Nations*, ed. by Sachau, p. 270) says that 'on the feast of the Congregation (עצרת) the Jews assemble in Harhara of Jerusalem carrying round in procession the Ark of the Covenant'. It appears that at the ⁷הג הסכות a large body of pilgrims assembled under the leadership of the head of the Palestinian community and made a solemn procession round the ⁷חר הויתים. On this occasion the Ḳaraites were publicly excommunicated, and as they themselves were present in large numbers, doubtless serious disturbances occurred periodically, cf. Poznański, *REJ.*, XLVIII, p. 153, n. 2. The practice of excommunicating heretics gave so much offence that in the next century it was abandoned by order of the Government, *op. cit.*, p. 156.

JQR., XIV, p. 53. IV

Bodl. MS. Heb. d. 74, fol. 28.

A

Recto.

מעברים את השנה בחוצה לארץ וכל המיטנאות שצוה וכתב מראשו שלפרק
 ר' אליעזר' התבוננו בהם וידענו אותם ואנחנו יודעים כי מבראשנה ומימים
 שהיה בית המקדש קיים לא היה עבור השנה תלוי לקבוע אדר ואדר אלא
 בחכמי ארץ ישראל ובארץ ישראל לפי שהעבור תלוי באביב ובפירות האילן
 5 כמו ששנינו על שלשה סימנין מעברים את השנה על האביב ועל פירות
 האילן ועל התקופה על שנים מהם מעברים ועל אחד אינן מעברים ובזמן
 שאביב אחד מהם הכל שמיחין' וכיון שעבור השנה תלוי באביב לא היה
 אפשר לעבר על אביב על שאר ארצות מפני שבחוצה לארץ יש מקום
 צונן מתעכב חדש אביב עד סיון' ויש מקום חם שממחר לבוא מסוף שבט
 10 ומחילין בקצירה מן אדר' ולכך לא היה איפשר לקבוע עבור שנה אלא בארץ
 ישראל שנ' לש"כנו תד"רשו וב"את יש"מה כל דרישות שאתה דורש לא יהיו
 אלא בשכנו שלמקום ואפילו בארץ ישראל עצמה כבר לא היתה כולה כשירה
 לעיבור אלא נחלת בני יהודה הוכשרה יתר מכול שבך שנינו שלש ארצות
 לעיבור יהודה עבר הירדן ונליל ואנחנו א' בזמן שיהודה אחת מהם הכל
 15 שמחים' וכל משניות והראיות בין שכתבן ראש ישיבה ובין שלא כתבם
בין שבפני הבית ובין של אחר הבית כולם ללמד שעבור השנה תלוי בארץ
 כולן בשביל אדר ואדר הן' וכבר אין בינינו וביניכם חילוף בעיבור שנים
 באדר ואדר מפני שהכל תפסו את המסורת בידם לחשבון נכסב
 אדו"ט ב"הו' נ"ה' וזה ולענין עיבור וחשבון כבר הכל שווין ואין בינינו
 20 לביניכם שינוי בעיבור שנים אבל קביעת חדשים לחשב מלאים
 וחסירין וכסדרן אינו מן העיבור שנה' ⁸ ובודאי שרבותינו שבבבל בדורות

⁸ seems to be required. עיבור השנה

Verso.

הראשנים היו שולחין ודורשין מרבתינו שלארין ישר' קביעת חדשי שנה בשנה
לפי שלא היו בקיאים בסדר העיבור כמותן לפיכך היו כותבין אליהם אבל מן שנים
רבות כבר עלו כמה חכמים מבבל אל ארין ישר' ודקדקו עם חכמי ארין ישר'
בסוד העיבור ופשפשו וחפששו בזה עד שנתבוננו בו יפה ויפה וכבר הם קובעים
חדשים בבבל זה שנים רבות לבדם וגם חכמי ארין ישראל מחשבים וקובעים
חדשים לבדם וכבר בכל השנים האלה עלה חשבונם אחד לא נמצא ביניהם
חילוק אלא החשבון על מכונו ועל תיקונו והמועדים מתקדשים חוקה אחת ותורה
אחת מפני שהחשבונות כולם כאחד ניתנו מרועה אחד ולא ראינו קלקול בזה
ולא פירצה כזאת ובודאי אנחנו התחלנו לקבוע חדשים בבבל היה לו לראש
ישיבה להוכיח אותנו ולאמר שניתם מנהג ועברתם על דברי רבותיכם הנה נא
יש ביישוב זקונים שהגיעו לגבורות וגם הזקינו מאד וכולם אין אחד מהם זוכר
שהוצרכו אנשי בבל לשאול עיבור שנים וקביעת חדשים מארין ישר' אלא
אתם מעברים כמנהגם וגם אנחנו מנהג אבותינו בידנו ואנחנו מעברים
כדרכנו וחשבון אחד הוא ולא שנינו⁹ גבול ולא שנינו מנהג ולא הצרכנו עצמינו לבוא
לתוכחת כבר מנהג אבותינו בידנו ושכ' תב ראש ישיבה שאף על פי שעברתם
והכרתם לא הכרתם כהוגן כי אמרתם שהשנה חדשה שלמין ואינה אלא הסירין
ממה שקבעו אבותינו הראשנים כבר התבוננו בסוד העיבור שהיה ביד אבותינו
הראשנים וראינו שכיון שתשרי שלשנה זו שהיא שנת אלף רל"ג לשטרות
נולד לד'א שעות תתקל"ב חלק כיון שהיא מעוברת לא היה ראוי לקבעה
אלא שלימים כמו שמפורש בשער שני שכל תשרי שיש בו עיבור ונולד
בליל ד' מן יא שעות תרצ"ה חלק' והלאה אחוז ראש שנה בחמישי וחדשים
שלימים שכיון שתקבע את החדשים שלימים נמצא הפסח בשלישי וראש

⁹ [ה] שנינו(?) Schechter writes.

JQR., XIV, p. 55. IV a

Recto.

שנה הבאה בחמישי וחדשים כסדרן והפסח בשבת' והשנה השלישית ראש שנה
 בשיני בשבת שכיון שתשרי שלשנה שלישית נולד ביום שבת אחר חצות כבר
 עבר זמנו מלקבעו בשבת ובאחד בשבת אין נכון לקבעו לפיכך ידחה לשיני
 בשבת' ואם תאמר נקבע שנה ראשונה חסירים כדי שיעשו מועדים
 5 בומניהם ושנה שנייה תיקבע שלמים נמצא פסח עירע להיות בערב שבת
 ואם תאמר שנה ראשונה כסדרן ושנייה שלמים אם עשית ראשונה כסדרן
 יערע הפסח בשיני בשבת ואם תאמר נקבע ראשונה חסירים ושנייה כסדרן ושלישית
 שלמים נמצא תשרי שלשנה שלישית שהוא שנת אלף דל"ה נולד אחר חצות
 בדל"ז אל¹⁰ חלק וכבר עבר זמנו ונדחה לשיני שהרי חיפשנו ודיקדקנו בכל השערים
 10 וראינו שכשיעבור מולד תשרי אחר חצות אפילו בחלק אחד אין ראוי לקבעו ביומו
 אלא לדחותו לפניו ושכתב ראש הישיבה שאין אנו נסמכין באלה שתי שנים
 על ארבעה שערים מפני מה אבותינו בדורות הראשונים לא סמכו בכל השנה
 אלא על ד' שערים ואנחנו לא נסמוך עליהם' ושכתב ראש ישיבה אבל אנו
 נסמכין על דברי חכמי שאם ניסן באגה ותשרי בנהז' אין דוחין אותו מיומו
 15 אם מולד תשרי בנהז' רואין אם נשתייר רביע יום חסר אמרת חלקים
 ביומו אין דוחין אותו ואם חסר במרת דוחין אותו
 נודיע לפני ראש ישיבה כי זה הדבר של
 מן הראשונים ולא כמנהג שכתב
 אם נול' ניסן בשבת

¹⁰ There seems to be some mistake here, and probably אל should be deleted.

Verso.

לא היו אומרים אלא על ניסן בשבת ועל תשרי בשיני בלבד. ותשרי של שנה
 השלישית היא שנת ר"ה לשטרות מולדו ביום שבת שש שעות ר"ז חלקים
 ולא בשיני בשבת הוא נולד ואינו בכלל אִמְרָת בְּמִרְתָּ כשאנו מחשבין את חשבון
 אִמְרָת בְּמִרְתָּ על ניסן בשבת ועל תשרי בשיני אין אנו מוצאין את החשבון
 שהוא נכון עליהם שכך מסרו חכמי בשער רביעי שכל תשרי שלאחר שנת 5
 העיבור שנולד ביום שיני ז' שעות תִּקְפֹּט חלק קבע אותו ביומו. ואם נולד
 בשלש שעות תִּקְצֵה חלק דחה אותו לשלישי ולקבע חדשים בסדרן. ואם לא
 היה בשנה שעברה עיבור ונולד תשרי עד שש שעות ביום שיני אין נדחה
 מיומו. ואם נולד אחר שש שעות חלק אחד נדחה לשלישי מוצד שאין
 קובעים אותו ביומו אלא כשנולד עד חצות בלבד. אבל מאחר חצות חלק אחד 10
 לא מצאנו שנקבע ביומו הרי למדנו שאפילו על תשרי לא יכון חשבון אִמְרָת
 בְּמִרְתָּ וכל שכן על ז'הוּ שלא יכון שהרי בדקנו בימים שעברו שהשינוי אנחנו
 ואחם על קביעתן ולא ראינו שקבעתם את החדש על חשבון אִמְרָת בְּמִרְתָּ
 אלא על ד' שערים. יתבונן ראש ישיבה שֶׁצ' בתשרי של שנת אלף רִבֵּה 15
 לשטרות שנולד ביום ששי יא' שעות קִפְּה חלק ומעוברת היתה ונקבעה
 לימים ונולד ניסן ילה ביום ז' ד' שעות שלא
 ח בתמישי ואם כן הוא שהמסורת בידכם
 לא קבעתם את חדשי אותה שנה
 קורם חצות

Saadyana, p. 19.

Bodl. MS. Heb. d. 74, fol. 29.

B

Recto.

שפסק משם הוא מתחיל, ומאי זה מקום פסק מחצי יום שלישי יפקחו
 עיניהם החברים ויראו התבונות העצומות האלה ואל יאמר כי ארבעה
 שערים אין בכלל[ם] אלא מעוט ימים ושעות של ד' ימים בלבד כי האומר כן
 בלא דעת ולא תבונה אמרה, שאין העולם עומד אלא עליהם ואין תקנת
 המועדות תלויה אלא בהם. והטעם השלישי שאמר בו אמ[ר]ת[ו] 5
 ביומו במר"ת למחר אין לו עיקר מדבר' חכמים, ואף מי [שבדאו מתחילה
 וכתבו לא היה יודע בסוד העיבור בין ימינו לשמאלו] כי אמר נולד ניסן
 באנ"ה ותשרי בנה"ז עד שש שעות אין דוחין א[ותו] אחר שש שעות
 דוחין אותו, ולא השיב אל לבו כי בהיולד [ניסן באנ"ה קודם שש שעות
 יהיה כנגדו] ותשרי(?) בנה"ז לאחר(?) שש שעות מפני שיש ביניהם שני ימים 10
 א[רבע שעות תל"ח חלק' לפיכך בהולד ניסן בארבע שעות ביום יולד
 תשרי בשמונה שעות תל"ח חלק' ואם דחינו ניסן מפני תשרי בטלו דבריו
 שאמ' בניסן קודם חצות אין דוחין אותו ואם לא דחינו תשרי מפנו ניסן
 בטלו דבריו שאמ' בתשרי לאחר חצות דוחין אותו ואם 11 יהי שעה
 שלימה יתר רנ"ז חלקים וכן תקפ"ט יהי ק"ז הל' כי כולם 15
 כתוספת אמר"ת והמשכילים יבינו, והשני שאמ' בו שהחשבון
 ד' שערים אינו מחזיר אלא על ד' ימים בלבד ומעוט שעות וחלקים
 הוכיח דברו עליו כאילו לא עבר על פתחה שלאומנות הזו כי חשבון ד'
 שערים כולל את כל הימים ויש מהם ימים שהוא מזכירן שתי פעמים
 או שלשה אבל מי חכם ויבן אלה 12 והרי אנו מפרש זאת בדרך קצרה
 עבור ונולד קודם תצא משעה

11 Marginal note by the scribe תם פי תלך אלדף.

12 Hos. 14. 10.

Verso.

חשיעות ביום ששי חסירין, ואם נולד אחרי בן שלימים לפי שבשאתה
מוסיף ה' ימים כ"א שעות תקפ"ט חלקים יגיע לסוף ו' מיום ה', הא למדת
שהזכיר יום חמישי, ואמר אם יתר על שש שעות דוחים אותן, ועוד
נאמר ואם אין בה עיבור ולא בשנה הבאה ונולד קודם ת"ח חלק' משעה
א' בליל ו' חסרים, ואם נולד אחר בן שלימים, מפני שבשאתה מוסיף 5
שתי פעמים ד' ימים ח' שעות תתע"ו חלקים לשתי שנים יגיע לסוף
שש שעות ביום שביעי, הא למדתה שהזכיר יום שבת, ואמר לאחר
שש שעות דוחין אותו ועוד נאמר ואם יש בשנה הבאה עיבור ונולד
קודם ר"ד חלק' משעה ז' בלילי ששי חסירים, ואם נולד אחרי בן
שלימים מפני שבשאתה מוסיף ז' ימים ה' (?) שעות תתע"ז (?) [חלק'] 10
יגיע לסוף שש שעות מיום שלישי הא למדת שהזכיר יום שלישי
ואמר אחר שש שעות דוחין אותן, והזכרת שיני בשבת כבר
פירשנוה בטעם הראשון הרי נגלה כי הזכיר כל הימים, ושאר
השערים שונים את הימים כי גבול תצא אשר בלילי א' בשבת
שונה להזכיר גבול שש שעות ביום שבת, וגבול ר"ד שבלילי אחר 15
בשבת שונה להזכיר שש שעות שביום ה' וגבול תקפ"ט שביום שיני
שונה להזכיר שש שעות שביום השלישי מן השנה שעברה, וכן גבול
ר"ד שבלילי שלישי וגבול תרצ"ה שבלילי רביעי משלשים להזכיר
שש שעות שליום השבת¹³ ואם לא דחינו ניסן ודחינו תשרי כדי (?) לקיים
דבריו הראשונים והאחרונים נמצא בין ניסן לתשרי ז' ימים והוצרך למלאות 20
אייר ותמוז או תמוז ואלול ואין לך טעות . . . ל . . . בשאר

¹³ Marginal note ינב יכון והרצעה לבחון הונא ינב יכון.

JQR., XIV, p. 56. V

Bodl. MS. Heb. d. 74, fol. 31.

C

Recto.

באו וישראל בני יעקב הקדושים כולם חוקה אחת ועשה את הפסח ביום
 אחד לבר ממאויני שוא ותפל' ומה שהזכרתם שנהפך בושם למק ומשפט
 למספח כבר קינטר הנביא ואמר והיה תחת בושם מק יהיה ונ' כל זה בגודל
 אשמינו ובחילוק לבבינו ברוך דיין האמת' ואמרתם שאתם אבילים
 5 נזופים בבכי תמורדים ואנחה בעזבתם את האמת ובנטותכם מדרך ישרה
 לדרך מכשול ובשמעכם לדברי בן פיומי הדלאצי אשר נתברר לפנינו בעדים
 ברורים וכשרים היעידו שהיה אביו מכה בפטיש בארץ מצרים לעבודה זרה
 ואכל מרק פיגולים ונדחף מארץ מצר' ומת ביפו השיגה אתכם הצרה הזאת
 ואמרתם שנעשיתם חרפה בנוים וקלסה בין המינים הלא זה תאותו של בן פיומי
 10 ובקשתו וי' ידון דינינו וינקום נקמתינו ויעשה נקמה בכל מי שהוא מבקש
 עזרת השונאים הכרתם שנמסך בקרב העם רוח עושים ובערה המדורה' רוח
 עושים נמסכה שנ' יי' מסך בקרבה רוח עושים ונ' והחשבתם לדברי מצרי
 לכך בערה המדורה במקומכם ונ' הפכו חגיכם לאבל ושמחתכם לתונה
 כדבריהם ועל זאת דאגנו והיצר לנו מאד ונישאלה מלפני רחום שירוח
 15 לכם ויחזירכם לאמת' והמחלוקת אשר הזכרתם בכל פינה ופינה
אנו יודעים שמעט היתה ונוספה בכתובי כהן ובן זכאי אשר אתם
 מכירים מעשיהם ומכם שמענו מה שנחקק בפתיחין אשר לכם וה[קשב] תם
 לדבריהם ונעשו כשרים אצלכם הלא זה תימה גדול או חשבתנו כמפותים
 בעיניכם ול' . . . אין זו דרך חב[יבה] לנו . . . ריעים
 20 ל' . . .

Verso.

אותנו בפיתוי כפיתויכם הראשון שנודיע אתכם טעם וכתבנו אליכם באמת לא
 במרד ולא במעל ובאו איגרותיכם בלשון כבוד וכיבדנו אתכם ובירכנו אתכם
 בכל ישראל והיינו סוברים שאתם עומדים על האמת עד אשר באו האיגרות
 האחרונות אשר שלחתם¹⁴ אלינו עטרת ישר' עדיינו היקר והנעים כב' גד' קד' מר'
 5 אהרן בירבי עמרם נ"ע מושיע הדור אשר לא היטה אונו לסור מחוקי יי' ומיכן
 ישמריהו ויחיהו ואושר בארץ ויוסיף לו כבוד על כבודו והדר על הדרו ויקיים
 לו את שני חמודיו זרע יקרים ניני כשרים הנאהבים והנעימים ובהם
 חקוק דברים שמבטלים את כל החרותים הראשונים ותרמידי חבמ' אשר
 אמרתם כי עניהם כלות ביגון מפני הרונו מי שהביאו עליו יאתא טוב
 קוינו מכם ויבא רע ואשר יגורנו בא לנו ערכתם עמנו קרב וישבתם לנו במארב
 10 לירות אותנו בסתר ובגלוי והוכרתם כי ישבתם שומימין וקרא אתכם
 פחד ורעדה על הכרות תלמידינו בהר הזתים סדרי מועדות באמת הכריזו
 כרת קדמונים הפסח באחד בשבת ומרחשון וכסלו חסירין ועל דברי האמת
 לא היה ראוי לכם להכריז לא בחילוף ולא בשינוי כי אבותיכם נ"נ היו מקבלים
 15 הכרות הר הזתים ומעולם לא שינו אבותיכם נ"נ זה המנהג ולא החליפו חוק
 ואמרתם שנגדור את הפרצה עליכם לפרוץ ועלינו לגדור כשנשמע לדברי
 כנעני ונסו מחוקי יי' ומעידותיו ומן הסוד שקיבלנו מפי רבותינו ז"ל
 היא גדירה אין זו אלא פירצה גדולה הריגת נפשות לא נאים הדברים האלה
 אשר אמרתם ואין זור יעשה למזור ולא ישקרו המיתרים ולא יעבור
 20 ל האף עד אשר ל ה כולנו חוקה
 מכם

¹⁴ JQR., XIV, p. 57, l. 4. שלחם doubtless an error.

ŒQR., XIV, p. 57. Va

Bodl. MS. Heb. d. 74, fol. 30.

D

Recto.

והזכרתם כי נוסף יגון על מואבכם ונעשת תקותכם מפח נפש בקרואתכם
את איגרותינו אין אנו [חפצים] להכאיבכם באיגרותינו ובנו ובכם נתקיים
ולא יסף שמואל לראות את שאול ומה שאמרתם כי אחריתה מרה
כלענה ליראנו ולבהלנו כתבתם ולא אמרתם בלבבכם נירא נא את יי' אלוהינו
מצינו שאבותינו הראשונים לא נהרגו אלא על ייחוד השם שנ' כי עליך הורגנו וג'
5 וכת' אלה ברכב ואלה בסוסים וכת' עמו זרוע בשר וג' אל תטריחו עצמכם
לעשות ספרים אילינו אם כאלה הם בחילוף חוק' וכתבתם תאמרו אם חטאנו
באשר עבר לא נוסף עוד אם עשיתם כזאת וחזרתם למוטב והודיתם אולי
תושעו ואם עשיתם בניסן בשננה אל תעשו בתשרי בודון ויי' הטוב יכפר
בעד כל לבבו הכין' והזכרתם כי רבו השמועות בגלל אחינו ישראל והאיגרות
10 באות אליכם מכל צד' הלא ידעתם שמישה רבינו ז"ל זכה וזיכה את הרבים
וירבעם חטא והחטיא את הרבים' שאו מרום עיניכם וראו בעלבון הדור
ל[טוב] שמעו ול[א?]] כדי מכשיל' עם שטוב לנו ולכם לבקש שלום שלא תארע
תקלה לישראל בימינו ואמרתם שאין הדבר תלוי אלא בנו לו האמנתם
לא סרתם מן הדרך ודברתם כדברי בן פיומי' תודיעו לכל שאין למודכם
15 אלא ממנו וזה חרבן עולם הוא שהוצרכתם לדברי בנ' עני והזכרתם
שניתן נפשינו על ישראל זו היא וסתינו ווסת אבותינו' תחל(ה) דויד מלך
ישראל אם תהי נא ירך בי וגו' ושנייה מהלל הזקן שנתן נפשו על ישראל
כמה פעמים ושלישית מרבינו הקדוש שנתן דמו על ישראל וגרן ורביעית
20 מר' יהודה הנשיא' והמישית מר' מוסי שנהרג בעזרה מתחת יד זרע
ענ' ומאבותינו ר' מאיר ור' מישה שכמה פעמים ביקשו היטואים

Verso.

להרנן ועשה שדי למען שמו' וששית' ממנו אנחנו אשר עבר עלינו צרות רבות
 ורעות וחבישת בית האסורים ועינוי הכבל ומ(לב)ות עד לצאת הנפש
 הכיפורים ראשונה ושנייה מתחת יד בני ענן השונאים' ובאנו אליכם להיעזר
 ביי' אלוהינו ובכם ועשיתם חסד ושכרם מיי' ובחזירתנו אל ארצינו תינינו
 5 שבחכם ובירכנו אתכם בהר הזתים מול היכל יי' ובשער הכהן וקראנו הפתחים
 שלכם בכל המקומות ועזרנו אתכם מאד מאד על שונאיכם ונטרו עלינו איבה
 מיכן' ואתם חזרתם לדבריהם אוי נא לנו על זאת כי חרדה גדולה אחזתנו
 ונבהלנו עד מאד עתה לא לכם ולנו כי הפכתם אהבתנו לשנאה ואבר גיעינו וכל
 יקר אשר חלקנו לא נגרע ממנו ואתם כטוב בעיניכם עשו' ויעצתם אותנו
 10 שלא נעמוד על דברי האמת מפני ששמעתם דברים רבים מחירדים את ליבו
 שלאדם ממי מן השונאים המנויים לצד ביי' בטחנו ועליו נשענו ואם באת
 עלינו צרה ורציתם בה מה יחשב לכם מן החסד שעשיתם ואילו נהרננו ואלף
 כמותנו לא נשנה מנהג אבותינו ולא נחליף חוק ולא נטה מיש(?). כו אבל משפט
נבחרה לנו' הראיות הנדולות אשר אמרתם דעו והבינו כי הם שלא כדת
 15 מפני שכתבתם שהיכרו את החדשים שלימים והינחתם הכרות הר הזתים
 והשלכתם אותה אהרי גוכם ואמרתם חשבון אִמְרָת בְּמִרְתָּ לֹא יִכּוֹן וראיתם
עצמכם גדולים מאבותיכם בחכמה וברעת זה תימהון ליבב הוא ואינו מכם
 אלא מבן פיומי שהיסיכתם הלא לאמת חיבים אתם להורות ודרך אמת
 זו היא' סוד זה בני ארץ ישראל סומכים עליו מימות עולם אם
 20 נולד תשרי ביום הראוי לו עד שש מאות¹⁵ וארבעים ואחד חלקים לאחר
 חצות קובעים באותו היום ראש תשרי וסימ' אִמְרָת קבלה היא מפי

¹⁵ The scribe first wrote שְׁעוֹת and corrected it into מֵאוֹת.

Bodl. MS. Heb. d. 74, fol. 27.

E

Recto.

.
 בפרשת רחש לבי דבר [טוב]¹⁶
 [ויש] ימני כהין ברור י¹⁷ ואם על אשפר
 נהפכים הדברים ויהי אחרי כל דעתו אז לו נאם
 עובדי עבירה קשה עונשו יתר מהן כי המדינים
 5 העוזרים נאמ' בהם צרור את המדינים¹⁸ והמואבים הנעזרים נאמ' בהם אל תצר
 את מואב י¹⁹ וכן הוא אומ' באבימלך בן ירובעל ועל בעלי שכם אשר חזקו את
 ידיו' ואומ' יען הכאות לב צדיק יסקר י²⁰ וישנינו עוד כל המהטיא את הרבים אין
 מספיקין בידו לעשות תשובה²¹ על כן לא אשאל מלפני הקב"ה לשיעבר שלא תהי אתה
 חכמי אשר כתבת זאת אבל אומרה משמועה רעה לא יירא י²² נכון סמוך לבי שלא
 10 היתה ירך באחת מכל אלה' אבל שאול אשאלך להוכיח את התלמיד אשר כתב
 הכתב הלו אם ידעתיהו²³ ולפריש לו טעותו ולצות עליו לשוב אל דרך האמת

¹⁶ Ps. 45. 2.¹⁷ Isa. 49. 2.¹⁸ Num. 25. 17.¹⁹ Deut. 2. 9.²⁰ Ezek. 13. 22.²¹ Ab. V, 26, ed. Taylor.²² Ps. 112. 7.²³ Apparently an error of the scribe; read ידעתהו.

Verso.

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 ובזאת תישב דעתי ודעת . . .
 את יי" אדונינו כי מאתך היא תהילתו . . .
 וכל עדתינו ואל תנור מפני בני אדם החציר ה
 לאמר ותשבח את יי" עשך.²⁴ ראה נא בעני הדור והשי . . .
 5 לך גורר פרץ משובב נחיתות לשבת²⁵ כאשר נאמ באהרן ורבים השיב מעון²⁶
 ושמא בשוב התלמיד הזה ישוב גם הראש או שמא הראש תולה את הקולר
 בצואר התלמיד הזה המסייע²⁷ תסובבם ותבוננם כי באהבה יתירה הוכחתים
 כתוכחת בן נורי לר עקיבה זכר כולם לברכה והוסיף לו אהבה ואל תחרש
 ואל תשקוט עד הסירך את השמועה הזאת מעליך ומעל תלמידך ותכתוב
 10 אלי בפירוש כל זאת עם כל דבריך והפציק כי ששון לבי המה²⁷ ושלום

²⁴ Isa. 51. 13.²⁵ Isa. 58. 12.²⁶ Mal. 2. 6.²⁷ Ps. 119. 111.



THE ANCIENT HEBREW LAW OF HOMICIDE*

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IV

In all the Biblical literature there is no mention that a *go'el* ever killed anybody, nor, indeed, is the term *go'el ha-dam* used in any other than the legal passages cited, and the historical notes relating thereto, save in one instance.

Absalom, having murdered his brother, Amnon, fled from the royal court to his maternal grandfather, King Talmai of Geshur, with whom he stayed for three years.

David's general-in-chief, Joab, was a partisan of Absalom, and favoured him for the succession to the throne. Exile was fatal to such pretensions, and Joab schemed for his recall.

Joab was a masterful character, skilled in diplomacy and great in war, who, in general, accomplished what he set out to do. For good reason he did not himself ask David to pardon Absalom, but contrived to put the matter to David through the agency of a wise woman (*ishah hakamah*).

Exactly what an *ishah hakamah* was is not clear. There are but two of them in the Bible, and both have dealings with Joab. One is tempted to opine that there were legends current in Israel concerning such women, and that the story we are now considering was one of the series. The wise woman of Abel-beth-maacah (2 Sam. 20. 18) treated with Joab, caused him to raise the siege, and saved the city. Her wit persuaded Joab, her wisdom controlled her towns-

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men. And now Joab entrusted a most delicate diplomatic negotiation to another *ishah hakamah*, her of Tekoa. Abeth-maacah was in the north; Tekoa was in the south.

The story is well told. Joab knew that David longed for Absalom, but would not recall him because he deserved the punishment he was undergoing. The point was to persuade the king that the time had come to pardon the delinquent.

Joab carefully instructed his wise woman. She was to be a mourning widow, one of whose sons had murdered the other. Justice demanded that the murderer should be executed, and his only son likewise. If this was done, her beloved husband's name and family would be totally extinct. She therefore implored him to stay the hand of justice and in his mercy grant a pardon. Her tears and prayers prevailed, and the king swore the great oath (*hai-JHVH*) that her son would be saved.

Now was the moment to remind David that he who would pardon the criminal of another family should do the same by his own, especially in view of the fact that the people desired it.

The king at once taxed her with being Joab's envoy, and she owned that she was. Her work, however, was well done. She had persuaded the king to yield to his longing. Joab was sent for and given leave to bring Absalom home.

It is in the course of the woman's fictitious story that she uses the term *go'el ha-dam*. The people who demanded justice against the murderer are called *kol-ha-mishpahah*, the ordinary meaning of which would be her husband's brothers and their descendants. The language ascribed to them is peculiar. They all speak together, and they do not address themselves to the *sikne ha-'ir* or to any other authority,

but to a lone widow who is assumed to have the guardianship of her son, who is himself the father of a boy. Their expressed desire is to kill the murderer and his son (*unmitelku be-nefesh ahiv asher harag we-nashmidah gam et ha-yoresht*) (2 Sam. 14. 7). So runs the story. The king bids her go home, that she shall not be troubled, and then she goes on to pray that the *go'el ha-dam* may no longer destroy, that *they* may not destroy her son (14. 11).

The whole story is obscure, though the account may omit circumstances which would have made it more plausible. The woman may, for instance, have represented herself as coming from a remote place in the northern mountains, where lawlessness prevailed, and where the whole royal power was needed to enforce law. At all events, the touch which says that the community in which she lives is unable to act without her help rather strains belief. Moreover, they do not speak of any one executing the culprit but themselves, in the plural. It is she who bethinks herself of the *go'el ha-dam*, and asks that *he* be restrained, in order that *they* might not kill her son.

If her application is, as it appears to be, for pardon, she says nothing that is inconsistent with the theory that she fears legal prosecution and conviction and the consequent death of her son at the hands of the *go'el ha-dam*, the federal executioner. On this view her conduct is natural, since she asks the king to stay the hand of his own officer.

Above all, it is necessary to remember that the whole is a piece of Joab's biography, intended to exalt his diplomatic wisdom. Biographies are often romantic, and in the case of popular heroes are from time to time retouched. When this story took its present shape may not be easy to

determine. In any event, it can scarcely be looked on as authority for law in the time of David. If we had the biography of Joab from which this story was probably extracted, the difficulties of interpretation might readily disappear. It is significant, however, that the *go'el ha-dam* is never spoken of in the literature after Joab. He was also the last who took refuge by the Altar in Jerusalem, and his death in that holy place marked the downfall of the whole idea of sanctuary.

The general conclusions which we have reached concerning the *go'el ha-dam* and the '*ir miqlat*', as stages in an extensive law reform, demand that the results of this movement be ascertained.

Its end was the establishment of a federal court in every canton of the land, each of which had executive officers to execute its judgements. 'Judges (*shofetim*) and officers (*shotrim*) appoint in every one of thy cities (*she-'arcka*), who shall judge the people with just judgement (*mishpat-šedeḳ*)' (Deut. 16. 18).

It was Jehoshaphat (873-849 B.C.) who, after a hundred years, gave to the grandiose conceptions of Solomon the final touch which assured their triumph.

The story is told in 2 Chronicles.

He began his reign by placing garrisons in all the '*arim* of Judah, and in the '*arim* of Ephraim that had been taken by his father Asa (17. 2). In the third year he sent his *sarim* (princes) into every corner of the land to instruct in the '*are Yehudah* (17. 7), and with them he sent legal experts (Levites and *kohanim*) to re-enforce their statesman-like arguments with the statement of the principles and practices of the Hebrew law, and they taught in Judah, carrying with them the *sefer torat ŠHVVH*, and went about

through all the 'are *Yehudah* and taught the people (17. 8, 9).

When the ground was thus carefully prepared and there were sufficient forces everywhere to assure obedience, he took the final step. He set judges (*shofetim*) in the land, in all the 'arim of Judah, city by city (19. 5).

Moreover, he established a supreme court in Jerusalem, composed of Levites, *kohanim*, and eminent chiefs to administer *mishpat* JHVH, and the ordinary *rib* (suits) (19. 8).

For cases concerning the king's revenues or estates, the court had a special president (*Nagid*), Zebadiah ben Ishmael, who was doubtless the king's confidential minister.

The jurisdiction of the court was appellate only. There is no hint of original jurisdiction, even in matters royal. The wording is unmistakable. Every *rib* (cause) which will come up to you from your brethren in the several 'arim ye shall instruct them so that they trespass not against JHVH and so wrath come upon you. And the causes are thus classed: *ben dam le-dam* (homicide cases, whether murder or manslaughter); *ben torah le-miṣwah*, *le-huḳḳim u-le-mishpatim* (this comprehends all other classes of cases).

The establishment of this appellate tribunal at Jerusalem is described at large in Deuteronomy. The charge, however, which in Chronicles is addressed to the judges of the supreme court, is here directed to the judges of the courts of first instance in the several 'arim.

If there arises a case (*dabar la-mishpat*) of murder or manslaughter (*ben dam le-dam*) or any other cause (*ben din le-din uben nega' la-nega'*, *dibre ribot*), or any law, or an assault, any controversy in thy cities (*bishe'arcka*), arise and go up to the *maḳom* which JHVH thy God will choose

for thee (Jerusalem). Go to the *Kohanim*, the Levites, and the *shofet* then in office, and inquire, and they shall instruct thee as to the law. According to their pronouncement thou shalt act, being heedful to obey exactly. According to the *torah* which they shall teach thee, and according to the *mishpat* which they shall tell thee, must thou act, swerving therefrom neither to the right nor the left. And he that will act contumaciously (*be-sadon*), not heeding the *Kohen* standing to minister there before JHVH thy God, or the *shofet*, that man shall die that evil may be removed from Israel. And the whole people shall hear and fear, that there be no more contumacy (Deut. 17. 8-13).

Great care was exercised to give specific instructions for the guidance of these judges in the *'arim*. They must have constituted an elaborate little code, fragments of which are still preserved.

One of the most interesting is in Exodus.

Do not heed a popular cry to convict nor decide a cause, either to please the powerful (*rabbim*), or to favour the poor (*dal*, *ebyon*) (Exod. 23. 2, 3, 6).

Abhor a false cause, nor condemn to death the *naqi* (once acquitted), or the *ṣaddik* (one that is innocent). The guilty cannot escape the justice of heaven (Exod. 23. 7).

Take no gift (*shohad*). It blindeth the wise and perverteth the cause of the innocent (*dibre ṣaddikim*) (Exod. 23. 8).

Do not oppress a *ger*; ye know a *ger's* life; ye were yourselves *gerim* in Egypt (Exod. 23. 9).

Here is another from Leviticus:

Do no unrighteousness in *mishpat*; respect not the person of the poor (*dal*), nor honour the person of the mighty (*gadol*). Judge in righteousness (*be-ṣedek*) (Lev. 19. 15).

Be not a prosecutor (*rakil*), nor be thou eager for thy neighbour's blood (19. 16).

Hate not thy brother in thy heart, nor wantonly rebuke him, nor fasten guilt upon him (19. 17).

Nurse no vengeance or grudge, but love thy neighbour as thyself (19. 11). Do no unrighteousness in *mishpat* with respect to *middah* (measurement), to *mishkal* (weight), or to *mesurah* (content) (19. 35).

Deuteronomy has several.

Moses says: I charged your *shofetim* at that time: Hear both sides (*shamo' ben ahekem*) and judge righteously (*sedek*) between them, *ezrah* or *ger* (Israelite or non-Israelite) (Deut. 1. 16).

Do not respect persons in *mishpat*, hear the little as well as the great, fear not the face of man, *mishpat* is of God. The cause that is too hard for you, bring it to me; I will hear it (Deut. 1. 17).

JHVH regardeth not persons nor taketh gifts (*shohad*); He deals *mishpat* for the fatherless and the widow, He loves the *ger* (Deut. 10. 17, 18).

Shofetim and *shotrim* appoint thou in all thy cities (*she'areka*) which JHVH thy God giveth thee to thy tribes, who shall judge the people with just judgement (*mishpat-sedek*). Thou shalt not wrest judgement (*mishpat*), nor take a gift (*shohad*), for *shohad* blindeth the eyes of the wise and perverteth the cause of the innocent (*dibre saddikim*). Justice, justice shalt thou follow (Deut. 16. 18-20).

The fathers shall not be put to death for the children, neither shall the children be put to death for the fathers. A man shall be put to death for his own crime (*be-het'o*). Pervert not the *mishpat* of the *ger* nor of the fatherless (Deut. 24. 16, 17).

If men have a controversy (*rib*) and bring it for judgement, the judges shall acquit the innocent (*šaddiḳ*) and convict the guilty (*rasha'*) (Deut. 25. 1).

Arur he that taketh *shoḥad* to condemn to death one who was once acquitted (*naḳi*) (Deut. 27. 25 ; cf. Exod. 23. 7).

That the system so established was complete is manifest. The details in Lev. 19. 35 show that the judges were custodians of standards of weights and measures, and this is an index of the care exercised to judge righteously.

The penalty of death for one kind of bribery appears to be fixed in Deut. 27. 25, and the deliberate disregard of the decision of the supreme court was declared a capital offence in Deut. 17. 12.

With the establishment of this system the whole machinery of sanctuary, of separated city, of '*are miḳlaṣ*, of *go'el ha-dam*, as well as the judicial functions of the *zikhne ha-'ir*, of the several cities and of the '*Edah*, were swept away, and *kofer* fell into oblivion.

The great question of murder or manslaughter (*ben dam le-dam*) was tried in every '*ir* according to the principles of the Hebrew law, as authoritatively expounded by the supreme court at Jerusalem. All vestiges of Canaanite law disappeared, leaving only a few literary survivals buried in this or that phrase or odd sentence of the legal codes.

When Jehoshaphat died in 849 B.C., he well deserved as an inscription on his monument the words of the Chronicler (2 Chron. 19. 4) :

'He went out among the people from Beersheba to Mount Ephraim and brought them back to JHVH, the God of their fathers.'

It is a strange trait of universal history that men who accomplish beneficial changes in the law of their country

remain obscure, while the names of warriors, who often afflict it with miseries, go sounding through the ages. It happens that the men who carried through Jehoshaphat's plans are known. The Chronicler has preserved their names. No one reads them. In this legal essay, however, they deserve to be repeated.

The princes (*sarim*) who led the movement were: Ben-hail, Obadiah, Zechariah, Nethanel, and Micaiah. The Levites were Shemaiah, Nethaniah, Zebadiah, Asahel, Shemiramoth, Jehonathan, Adonijah, Tobijah, and Tobadonijah; and the priests (*kohanim*) Elishama and Jehoram (2 Chron. 17. 7, 8).

All honour to this great company of statesmen and jurists, benefactors of mankind, and to their master, Jehoshaphat!

It is pleasant to fancy that some such sentiment inspired the prophet Joel to name the place where, on the great day, the nations were to be judged, the Valley of Jehoshaphat (Joel 4. 2, 12).

The firm establishment of the Hebrew law in Judah must have influenced the northern kingdom. Jehoshaphat and the kings of Israel were in close alliance, Jehoshaphat's son and successor married King Ahab's daughter, and the two kingdoms marched peacefully side by side. Nevertheless, the movement for *Torah*, law, was slower in the north than in the south. In our second lecture reference was made to the hostile criticism on this subject uttered a hundred years later by the prophet Amos.

The success of these great reform measures had incidental consequences, in modifying methods of legal procedure, and in rooting out some legal principles which revolted the Hebrew conception of justice.

In Canaanite law the presence of the accused was not necessary. The *zikkne ha-'ir* could try and adjudge his case in his absence. Moreover, at such trial the accuser was the all-sufficient witness. Then, too, a man acquitted might be tried again. Twice in jeopardy was no defence.

These features of Canaanite law are inferred from the energetic opposition to them in the *Torah*. That the old law permitted the trial of a person in his absence, appears from the demand of the *anshe ha-'ir* of Ophrah, that Gideon's father should surrender his son for execution, the latter having been convicted of a capital offence. Had he been present, participating in the trial, the demand would have been superfluous (Judges 6. 30).

And there is another similar case under the law of the *zikkne ha-'ir*. A woman charged with gross fraud on the marital relation may be tried in her absence and brought out for execution (Deut. 22. 21).

In the Hebrew law a trial in the absence of the defendant was inconceivable. Even in the days of oracle trials, which were not trials in the legal sense, there being no issue between parties, the accused were always present. The reported cases attest this fact (Achan's case, Joshua 7. 14-18; Jonathan's case, 1 Sam. 14. 38-42).

When trials were instituted, the rule was still more strongly insisted on (Deut. 1. 16, 17).

That one witness was all that the Canaanite law required, and that a man might thus be at the mercy of an enemy, is readily inferred from the almost passionate opposition of the Hebrew code to that practice.

'The murderer shall be put to death by the mouth of witnesses. One witness shall not testify against any person to cause him to die' (Num. 35. 30).

‘At the mouth of two witnesses, or three witnesses, shall he that is worthy of death be put to death; at the mouth of one witness he shall not be put to death. The hands of the witnesses shall be first upon him to put him to death, and afterward the hand of *kol ha-‘am*’ (Deut. 17. 6, 7).

‘One witness shall not rise up against a man for any crime or misdemeanour charged against him; at the mouth of two witnesses, or at the mouth of three witnesses, shall the matter be established’ (Deut. 19. 15).

In the Northern Kingdom, which was less zealous than Judah in protecting the Hebrew law against Canaanite infusion, the rule of two witnesses was firmly established in the time of Ahab, the friend and contemporary of Jehoshaphat (1 Kings 21. 10, 18).

So rooted was the idea of two witnesses in the Hebrew mind that when JHVH instructed the prophet Isaiah to take a roll and write in it concerning *Maher-shalal-hash-baz*, he did so with two witnesses (Isa. 8. 2). Jeremiah called in subscribing *witnesses* to a deed (Jer. 32. 10, 12), and in his prayer afterwards he refers this fact to the express command of JHVH: Thou didst say to me, O Lord JHVH, Buy the field for money and take *witnesses* (Jer. 32. 25).

That the Canaanite law permitted a man accused and acquitted to be tried again, and convicted and punished, is provable by the same character of evidence. The Hebrew law piles protest upon protest against punishing the *naki*, the man once acquitted.

When it is remembered that down to the time of David certain cases were tried by the oracle, it becomes apparent that an acquittal, being recognized as the judgement of Heaven, and as such infallible, was necessarily final and

irreversible, and that another trial for the same offence was inconceivable.

Hence the criminal law has a terminology of its own which brings out necessary distinctions. An innocent man is *ṣaddiḳ*, a guilty one *rasha'*. To acquit the innocent is *hiṣdiḳ*, to convict the guilty is *hirshia'*, to acquit one who has committed a transgression, or to allow him to escape conviction, is *niḳḳah*.

The difference between an innocent man and one legally declared to be innocent by acquittal, is also marked. The former, as has been said, is *ṣaddiḳ* (innocent), the latter is *naḳi* (not guilty).

In this exculpatory verdict there lurked then, as in our own day, the hidden thought which the Scotch broadly speak out by their verdict of *not proven*. This comes out clearly in one of the laws of the judge-code, already referred to: Do not condemn to death the *naḳi* or the *ṣaddiḳ*; for I will not acquit the guilty (Exod. 23. 7). The judge is here exhorted to have no scruples about freeing the *naḳi*, however strongly he may be convinced of his guilt, and of the error which produced the former acquittal. He is forcibly reminded that there is justice in Heaven which corrects human errors. In that tribunal a guilty man cannot plead his former acquittal by an earthly court.

So, too, in Deut. 19. 10. Elaborate provision is there made in order that a man guilty of manslaughter, which is not a capital offence, shall not be put to death. The declared object is that the blood of the *naḳi* shall not be shed, an act which would bring blood-guilt (*damim*) upon the whole community. The man guilty of manslaughter and punishable, therefore, is *naḳi* (acquitted of murder).

Indeed, the word *naḳi* very often means to be *freed*

from something, in contrast with the idea of having been entirely *free* from any connexion with it.

If Abraham's messenger should do his errand and others cause it to fail, he shall be *naḳi* (freed, acquitted) of his obligation (Gen. 24. 41). And the word is used in a like sense in Joshua 2. 17-20. If a man's ox gore a man to death, his owner shall be *naḳi* (i.e. acquitted of guilt under certain circumstances) (Exod. 21. 28-32).

When the community has ceremonially cleared itself of blood-guilt (*nikkapper*) for one slain by an unknown, it prays to be *naḳi* (acquitted) (Deut. 21. 8).

A man whose place is in the army is freed (*naḳi*) from that duty when he has newly married (Deut. 24. 5).

There are many passages which bear out our interpretation of *ṣaddiḳ*, *rasha'*, *hiṣdiḳ*, *hirshia'*, and *nikḳah*. Here are some of them : 1 Kings 8. 32 ; 2 Chron. 6. 23 ; Exod. 21. 28 ; 22. 8 ; 23. 8 ; Deut. 25. 1, 2 ; Isa. 5. 23 ; 2 Sam. 14. 9 ; 15. 4 ; Exod. 20. 7 ; Deut. 5. 11 ; Jer. 30. 11 ; 46. 28 ; Amos 2. 6 ; 5. 12 ; Joel 4 (3), 21 ; Nahum 1. 3 ; Ps. 94. 21 ; Prov. 17. 15, 23, 26 ; 18. 5, 17 ; 19. 5, 9 ; 24. 24 ; Job 9. 20 ; 34. 17.

Perhaps the most objectionable feature of Canaanite law was a remnant of a prehistoric *lex talionis*, which had as a consequence that for the crime of the father, the son might be put to death, and perhaps also that for the crime of the son, his father might be put to death.

The only concrete case on this subject is unfortunately hypothetical, and, worse still, fictitious. The wise woman of Tekoa states the law to be that, when a man who has a son and heir, kills another who has not yet a son and heir, the murderer and his son shall both be put to death. Strange as this may seem, it is quite in the spirit of the

Code of Hammurabi. The murderer is punished because of his crime; his son is executed because, if he were not, the murderer's position would be superior to his victim's; whereas the object of the Code is to make the criminal's disadvantage just as great as that suffered by his innocent victim. That the son had done nothing to deserve death was purely irrelevant in a system of laws which judged the guilt, in acts which we look upon as high crimes, by results and not by intentions or motives; which, in short, looked upon penalties, however personal and severe, as being in the nature of damages for private trespasses, demanding just compensation, regardless of motive. That children were in some sense the father's chattels, and not free citizens of the state, is a proposition involved in the other. Their feelings or sufferings did not enter into the legal thought of the Hammurabi Code. Hence, when a man's son was doomed to death for his father's offence, it was the father who was being punished, just as if he had been deprived of a slave, of a ship, or of any other valuable chattel.

This principle was repellent to Hebrew law, being in direct opposition to the Hebrew thought that before inflicting capital punishment for homicide, the murderous intent, the malice aforethought, of the perpetrator must be established. The rule of individual responsibility thus laid down, swept away all laws based on the contrary principle. Nothing was, however, left to inference. It was set down in plain and unmistakable words. Hence the declaration:

Fathers shall not be put to death for children, nor children be put to death for their fathers. For his own crime only can a man be put to death (Deut. 14. 16; 2 Kings 14. 6; 2 Chron. 25. 4).

Ezekiel, too, incidentally refers to the subject. He is

addressing his fellow exiles in Babylonia (c. 590 B.C.). He finds that their patriotic spirit has been weakened, and that they are settling down to the belief that the nation will never be restored to its home. In short, they are comfortable and quite content to remain in the new land. Verbally, however, they declare the Exile a calamity, and invent reasons why they are so severely punished. It is the fault of their ancestors, who, while they ruled the land of Israel, failed in duty to JHVH. It is this insincere casuistry which Ezekiel is belabouring. He reproaches them with applying to their circumstances a heartless and untrue popular saying: The fathers have eaten sour grapes, and the children's teeth are set on edge. He intimates that they are absorbing alien ideas and setting them higher than the wisdom of their ancestors; that they are quoting alien proverbs, and wrathfully exclaims: What mean ye, that ye use this proverb concerning the land of Israel? And then he delivers JHVH'S message, that every individual soul is the Lord's, and goes on with a subtle satire on Babylonian legal conceptions, which are at the bottom of the objectionable proverb: The man that is guilty shall be put to death. If a man be innocent and do what is lawful and right, he is innocent (*saddik*) and shall live, saith JHVH. If his son violates every law and right, he shall be put to death; upon him is the blood-guilt (*damav bo*). If this wicked son beget a good son, who does what is lawful and right, he shall not be put to death for his father's crime. He shall live. It is the guilty father who must die for his own crimes. Turning on his audience, he tells them that their flippant use of the proverb, in effect, means that the son should be punished for his father's crime, whereas every man is answerable for himself.

And in his peroration he urges them to make for themselves a new heart and a new spirit, and Israel will revive (Ezek. 18. 1-32).

It was the strong assimilative bent of the Babylonian *Golah* which he deplored and was chastising, and in doing so he brought home to them the inferiority of Babylonian justice as compared with Hebrew justice. That he had in mind certain provisions of the Code of Hammurabi is scarcely to be doubted (Lecture I, Secs. 116, 210, and 230 of that code).

It was Zionism which Ezekiel was preaching, to rather dull ears, as it seemed to him.

The nations (*goyim*) shall know that I am JHVH, and I will take you from among their midst, will gather you out of all lands, and will restore you to your own land (36. 23, 24).

And the climax of his optimistic eloquence on this theme was reached in his 37th chapter, that wonderful description of the reanimation of the scattered dry bones into a glowing and glorious organism (37. 1-14).

Perhaps the most important and far-reaching of the secondary conflicts between Canaanite law and Hebrew law, arose over the question of the killing of a slave. First-hand knowledge of the former we have none. There is, however, the Hammurabi Code, which at least gives us information as to the state of west-Asiatic law a thousand years before the Hebrew conquest of Canaan, and the influence of which must have been appreciable in Palestine.

According to it, there were at least three contingencies to be considered. The slave might have been killed by a freeman other than his master, by a slave or by the master himself.

The whole tenor of the Code shows that the resolutions were as follows. The freeman who killed another man's slave had to furnish another in his stead or pay his value, to wit, one-third of a mina of silver (Secs. 116, 219, 231, 252). This appears to have been the money value of a slave male or female (Secs. 116, 214).

If a slave killed another man's slave, there is nothing in the Code to make his master answerable, in money or otherwise. Nor is there any indication that the slave was punished, except perhaps by the loss of his ear or his ears. The Code had great regard for property, and slaves were property. The only punishment that could be inflicted on them, without materially reducing their working-power and consequent value, was cutting off their ears. Accordingly, we learn that if he have struck the cheek of a freedman (Sec. 205), or have repudiated his master (Sec. 282), in either case he loses his ear. That the fear of abating his value controlled the policy of the statute, appears from the fact that where an assault by a freeman is punishable by mutilation, it is the offending hands that are cut off (Secs. 195, 218, 226), and where a freeman has spoken that which is criminal, it is his guilty tongue that is cut out (Sec. 192).

As the Code does not treat of homicide, it throws no direct light on the question of what would happen to the master if he killed his slave. The general principle, however, is clear, that the slave is the mere chattel of the master. If any one kills or maims him, he must pay the master, who, according to the law, is the only one that suffers legal injury (Secs. 116, 219, 231, 252, 199, 213, 220, 232).

Another noticeable fact is that while assaults without evil consequences are punished if committed on gentlemen or freedmen (Secs. 202, 203, 204), there is nothing said about

an assault on a slave, evidently on the principle that if his value has not been impaired, his master has suffered no injury, and he himself is legally incapable to sustain legal injury, *injuria*.

We may fairly conclude that according to the Hammurabi Code, if a man killed his slave it was his own concern purely. He was the only loser.

Whether the Canaanite law of 1000 B.C. was like the Hammurabi Code is impossible to know, but that it had points of resemblance to it may fairly be inferred from the attitude of the Hebrew law on the subject.

Exod. 21. 20, 21, 26, 27, 32 is an important little slave-code. It declares as a principle that the slave is the master's property (*kaspo hu*) (21. 21), and then proceeds to enact exceptions which destroy the rule.

They are as follows :

Exod. 21. 20. If a man smite his male slave (*'ebed*) or his female slave (*amah*) with a rod (*shebet*) and death is produced under his hand, *na'kom yinna'kem* (Authorized Version : he shall be surely punished).

Exod. 21. 21. Notwithstanding if he continue a day or two (*yom o yomayim*), *lo yukkam* (Authorized Version : he shall not be punished), for he is his money (*ki kaspo hu*).

Exod. 21. 26. And if a man smite the eye of his male slave (*'ebed*) or the eye of his female slave (*amah*) that it be destroyed, he must free him.

Exod. 21. 27. And if he smite out the tooth of his male slave (*'ebed*) or the tooth of his female slave (*amah*), he must free him.

Exod. 21. 32. If a goring ox push (to death) a male slave (*'ebed*) or a female slave (*amah*), the owner of

the ox shall pay unto the owner of the slave thirty shekels of silver, and the ox shall be stoned (to death).

The significance of this Code is that the slave is recognized as a member of society, and certain acts injurious to him are declared to be crimes against the state and punishable by it. If he be maimed by the master so that he loses an eye or a tooth, the state frees him. If he be murdered by the master, there is nothing to exempt the latter from the operation of the general law, which punishes that crime with death. If, however, he die under his master's hand in consequence of the latter's whipping, it is not murder punishable by death, but it is a crime, and the state inflicts a punishment, *naḳom yinnaḳem*, whose nature we shall discuss in the next lecture. If, however, he do not die till the day after the whipping, there is no punishment.

If the slave be murdered by another, the latter, whatever be his station, is undoubtedly guilty of a capital offence.

If, however, he be killed by a goring ox, under the circumstances, which in the case of a freeman's death would entail the payment of vindictive damages (*kofer*, *werigild*), the owner of the ox merely pays the owner of the slave thirty silver shekels and the ox is stoned.

When we consider the provisions of this little slave-code in the light of all the authorities, there is much material for reflection. When the Hebrews acquired the land of Canaan they found slavery in existence, and were unable to abolish it. That this failure was a severe blow to the Hebrew authorities the whole literature attests. Upon every occasion it is declared that escape from Egyptian slavery was the beginning of JHVH's kingdom in Canaan, and that freedom is the foundation of JHVH's commonwealth.

Remember this day in which ye came out from

Egypt, out of the house of slavery (*bet 'abadim*) (Exod. 13. 3, 14; 20, 2; Deut. 5. 6).

I am JHVH, your *Elohim*, who brought you forth out of the land of Egypt that ye should not be their slaves (*'abadim*), and I have broken the bonds of your yoke and made you go upright (Lev. 26. 13).

Thou shalt say unto thy son: We were Pharaoh's slaves (*'abadim*) in Egypt, and JHVH brought us out of Egypt with a mighty hand (Deut. 6. 21; 7. 8).

Lest thine heart be lifted up, and thou forget JHVH, thy *Elohim*, who brought thee forth out of the land of Egypt, from the house of slavery (*bet 'abadim*) (Deut. 8. 14; 13. 6 (5); 13. 11 (10)).

I brought thee up out of the land of Egypt and redeemed thee out of the house of slavery (*bet 'abadim*) (Micah 6. 4).

I made a covenant with your fathers in the day that I brought them forth out of the land of Egypt, out of the house of slavery (*bet 'abadim*), as follows: At the end of seven years let ye go every man his brother a Hebrew, who hath been sold unto ye. And one who hath served you six years send him out free (at the end of the six years) (Jer. 34. 13, 14).

Ye have not hearkened unto me in proclaiming liberty (*deror*) every one to his brother and every one to his neighbour (Jer. 34. 17).

Proclaim liberty (*deror*) throughout all the land unto all the inhabitants thereof (Lev. 25. 10).

Efforts to abolish slavery began at an early day. The first step was to destroy the master's absolute power over the life of the slave, and to convert perpetual slavery into serfdom for a limited period (six years) (21. 2). At this

point the opposition was too great, and the federal government had to yield its principle of the equality of the *ger*. The latter was not included in the serfdom statute. Even in its modified form, the emancipation measure was not completely successful. The masters were powerful enough to compel the government to permit the perpetual slavery of the Hebrew *ezrah* by the device of a voluntary contract. A form of procedure was invented (21. 5, 6), by which the policy of the state was overcome. Such a law would have been impossible if the government had felt itself able to resist. The ancient Hebrew jurists saw, just as clearly as do we, that fundamental state policies ought not to become the plaything of the greedy and the ambitious, under any circumstances, and that their nullification by private individuals, whether under the name of contract or otherwise, is inconsistent with the state's sovereignty. Nevertheless, they yielded, because no other course was open to them.

Notwithstanding these drawbacks, the advance made inaugurated an era of human progress.

One who kidnapped a man to enslave him, suffered death (Exod. 21. 16). Hammurabi's Code had a similar provision for the protection of freemen (Sec. 14), but its fanatical enthusiasm for slavery was displayed by denouncing the death penalty against one who attempted to free a slave (Secs. 15, 16, 19).

The important point, however, was that for the first time the state made the slave's right to life and limb its own concern. That even in this it had to make concessions is true, but with all its incompleteness, it was the foundation of a new world for the very poor. The lordly classes learned that it was not at their will that the underworld enjoyed life, nor was it within their province to destroy it.

The terms *nefesh*, *ish*, *adam*, *rea'* (man, neighbour) took on a new meaning (Gen. 9. 56; Exod. 21. 12; Lev. 24. 17, 21; Num. 35. 30; Deut. 19. 11; Josh. 20. 3). A slave was at last a man, a *ben-adam*.

In the light of this advance, the halting features of the statute are not as important as at first they seem.

The 20th and 21st verses, which define the crime of a master whose slave dies in consequence of his whipping as less than murder, are in harmony with the general law that without malice aforethought there cannot be murder.

In the case put there is everything to exclude the idea of malice. On the contrary, the master is acting according to his right and, in the thought of that day, according to his duty. It is not the case of a wanton assault; it is a case of lawful whipping, not with anything that caprice or anger may dictate, but with the lawful instrument in general use for that purpose, the rod (*shebet*). If it were any other weapon, the master would no longer have the benefit of this provision, but would come under the general law regulating homicide (Num. 35. 16, 17, 18).

It is true that whipping with the *shebet* sometimes resulted in death, but it was permitted by law, and regulations concerning it were enacted (Deut. 25. 2, 3; 2 Sam. 7. 14). No danger was apprehended from it. 'If thou beatest him with the *shebet*, he will not die' (Prov. 23. 13). Parents were admonished to use it in correcting the faults of their children (Prov. 13. 24; 22. 15; 23. 13; 29. 15). It was therefore the master's usual and proper instrument for disciplining the slave.

In view of the master's pecuniary interest in the life and work of his slave, an intent to disable or kill him could not fairly be presumed. If, therefore, the slave died, the

reasonable presumption was to ascribe the death to his constitutional weakness. And it is this presumption which is embodied in the 21st verse, that if the slave do not die on the day of the whipping, the master goes free. But if he die on the day of the whipping, this presumption is rebutted and overcome, and the master must suffer his punishment.

The effect of this law was to compel the master to remember that in administering punishment, he was in a sense exercising a public function, and that the day for considering it his private affair was over. Just as Deut. 25. 2, 3 prescribed moderation in whipping to courts and their officers, so the statute imposed it on masters.

It is certain that this law did not abolish slavery, but it so ameliorated its features that its gradual disappearance might reasonably be hoped for. That these hopes were never realized to the full, it is needless to say. Every advance of mankind begets a desire for further improvement. This is the immutable law of progress.

When slavery had largely disappeared, economic equality did not result. The freed slaves doubtless fell into the ranks of the *sekirim*, the *dallim*, and the *chyonim* of later ages, who, with their great spokesmen, the writing prophets, agitated for the betterment of their lot.

There remains for consideration the meaning of the term *naḳom yinnaḳem*, which is the punishment imposed by the law (Exod. 21. 20) on the master whose slave dies during a whipping or afterwards on the same day. This involves a consideration of Hebrew modes of punishment for crimes, and may well be deferred to the next—the last lecture of this series.

V

The notions of punishment, retaliation, and revenge are nearly allied. Revenge is the primitive and unregulated impulse to hurt one who has inflicted an injury. Retaliation is revenge modified by a sense of justice and due proportion. It operates in two ways. Either it inflicts upon the wrong-doer, as nearly as may be, the kind and quantity of harm he has done, or it ascertains the particular portion of his body which has been the instrument of the wrong, and deprives him of it by mutilation. Legal punishment, while it has as basic element the idea underlying the other two, is essentially different in this, that while they keep in mind a certain personal satisfaction to the injured party, it regards nothing but the welfare of the whole community.

Revenge, as a general rule of conduct, necessarily ends when society becomes reasonably organized. It is then that retaliation, the *lex talionis*, is introduced. The state is not yet exercising all of its proper functions, but leaves some of them to be administered by constituent subdivisions, whether they be families, clans, tribes, or guilds.

In doing this it is not neglecting its duty. It has simply not become conscious of it. Early states are all politico-ecclesiastical, that is, they have a civil and ecclesiastical government, however rudimentary, and these constitute the ruling power. By the natural law of self-defence, they resist aggression directed against these functions. Hence it is that the acts which early states recognized as crimes or offences against the commonwealth are those which are of a public nature, a kind of treason against church or state, and they are generally viewed as worthy of death.

Offences against private individuals are, at this stage, looked upon as trespasses, mere civil injuries, with which the community as a whole has no other concern than to preserve the peace, so that the safety of the state may not be endangered. To this end it establishes tribunals which arbitrate between disputants and determine what satisfaction the one shall give the other. This view is so fundamental that even now states do not otherwise interfere between individuals in the great mass of transactions and disputes.

The time comes, however, when states recognize that there are some wrongs inflicted on private individuals which, if not vigorously checked, indirectly sap the foundations of the state. These are then treated as crimes in analogy to those acts which are direct assaults on the state.

Of all the trespasses thus advanced to the degree of crime, the most important is homicide. The advance, however, is not made at one leap; it goes by stages. While the retaliatory state subsists, the individual is never compelled to stand alone. His family, clan, tribe, or guild constitutes a kind of corporation, which assumes the duty of guarding or avenging the lives of its members. Of such corporations there may be many in a state. If a member of one of them kills a member of another, the latter retaliates in kind. There is as yet no sufficient development of comity between these constituent bodies to provide for arbitration, for judicial investigation, and hence the rude justice of the *lex talionis* is established.

If, however, the slayer and the slain are both members of the same subdivision, the rule does not apply. No organization could grow or achieve permanence if it

invariably supplemented the killing of one of its members by the destruction of another in a continuing series. A new interest, the communal, intervenes to regulate private feuds within the organization. Hence arises legal punishment to replace the *lex talionis*.

In a state in this stage of organization, both systems co-exist, a rudimentary kind of legal punishment for offences within the subdivision. retaliation for those without.

The superiority of the system which bases punishment on communal policy over that of mere retaliation, becomes apparent by degrees. In time it is fully realized, and then the state withdraws from subordinate organizations the function of dealing with crime and itself assumes it, to the exclusion of all other authority. Then it is that a state may be said to be fully organized.

This form of opinion arises when a country is substantially consolidated, when its inter-clan feuds have been practically abolished, when individual citizens feel themselves in direct and intimate relation with the state, and the state becomes conscious that these citizens are its true and ultimate constituents.

The national mission of keeping the peace between its constituent tribes or clans has been accomplished, and in its place comes the national duty of keeping the peace between its individual citizens. The function of preventing the decimation of one clan by another is replaced by that of preventing one man from killing another. Individual responsibility being established, the mild internal homicide law, which inter-clan hostility created, must be modified so that wilful murder shall be inexorably punished by death, while less guilty kinds of homicide shall not be condoned by mere money payments.

The Hammurabi Code shows us Babylonia in the retaliation stage, from which it is scarcely beginning to emerge. It has not yet made homicide the affair of the state. Evidently the *lex talionis* is in full force between the several constituent bodies of the state. As regards minor offences, it has numerous provisions for inflicting on the perpetrator of a personal injury, the same kind of hurt, and has many others for mutilation, by cutting out or cutting off the perpetrator's offending member, the eye for evil looks (Sec. 193), the tongue for evil speech (Sec. 192), the hands for evil blows (Sec. 195), the breasts for a nurse's wrong-doing (Sec. 194), and so on.

It has been many times said, and is constantly repeated, that the *lex talionis* is the law of the *Torah*.

When it is remembered that the Hebrew law provides for a careful trial of the accused, and declares that malice aforethought must be ascertained or the offence is not capital, it is scarcely necessary to repeat that alongside of this law there could not be recognized another which ignores all these points and dooms to death the man who has just escaped the death sentence. The notion that two systems of law so contrary to each other can be applicable in the same case, in the same place, at the same time, is too wild for serious consideration. Yet there is a general opinion that 'the Avenger of Blood' had but to wait outside of the court room until the tribunal had acquitted the prisoner, and that then he lawfully killed him, and that the tribunal acquiesced in this disposition of the case.

It is interesting to trace the history of this widely-diffused error.

There seems to have been in pre-Hebraic times a maxim

professing to sum up in popular speech the character and effect of the law of retaliation. It survives in the Pentateuch in three versions, each somewhat varying from the others. Its origin was probably in the remote past, when it may have been in substantial accord with the law of retaliation as then practised. That it was older than the Hammurabi Code is plain. The latter had already advanced to the point that between ordinary citizens it did not demand an eye for an eye, or a tooth for a tooth, but was satisfied with a mina of silver for an eye and a third of a mina of silver for a tooth. Changes in the law, however substantial, do not seem to affect the life of such maxims. Men go on repeating them, unconsciously converting the literal into metaphorical meaning, so as to avoid doing violence to their actual opinions.

Of this truth, the maxim under consideration is a striking illustration. In order that this may be the better understood, we must look not only at the various texts of the maxim, but at the context in which they are embedded. These will show the circumstances under which it was cited, and the purpose of citing it.

The first of the versions is in Exodus, chapter 21. Here are text and context :

Exod. 21. 22. If men strive and hurt a woman with child, so that her fruit depart from her, and yet no mischief follows, *he* shall be surely punished according as the woman's husband will lay upon him ; and he shall pay as the judges determine.

21. 23. And if any mischief follow, then thou shalt give life for life (*nefesh tahat nefesh*).

21. 24. Eye for eye, tooth for tooth, hand for hand, foot for foot.

21. 25. Burning for burning, wound for wound, stripe for stripe.

The Deuteronomy version is contained in the following :

Deut. 19. 16-18 provides for the trial of a witness on the charge of perjury in a trial for the capital offence of *sarah* (*Hebrew Polity*, pp. 51-61).

19. 19. (If convicted) then shall ye do unto him, as he had thought to have done unto his brother ; so shalt thou put the evil away from among you.

19. 20. And the rest will hear and fear and will not henceforth commit such evil among you.

19. 21. Have no pity : Life for life (*nefesh be-nefesh*), eye for eye, tooth for tooth, hand for hand, foot for foot.

The Leviticus version is part of a peculiar text, concerning which something was said at the end of the third lecture. It is as follows :

Lev. 24. 10-16 is the report of a trial for blaspheming the *Shem*, the decision and the law promulgated thereupon, that one guilty of that offence must be stoned to death by the 'Edah, and that the *ger* is just as amenable to this law as the *ezrah*.

24. 17. He that killeth any man shall be put to death.

24. 18. He that killeth a beast shall make it good (*yeshallemennah*), beast for beast (*nefesh tahat nefesh*).

24. 19. If a man cause a blemish (*mum*) in his neighbour, as he hath done, so shall it be done to him.

24. 20. Breach for breach, eye for eye, tooth for tooth : as he hath caused a blemish (*mum*) in a man so shall it be done to him.

24. 21. He that killeth a beast shall make it good (*yeshallemennah*) and he that killeth a man shall be put to death.

24. 22. Ye shall have one *mishpat* for *ger* as for *ezrah*.
I am JHVH your God.

24. 23. And Moses spake to the *Bne-Israel* that they should bring forth him that cursed out of the camp and stone him with stones. And the *Bne-Israel* did as JHVH commanded Moses.

The maxim refers only to homicide and to maiming. We know the Hebrew law of both. Homicide is either murder, which is a capital offence, or it is manslaughter, which is punishable by a form of imprisonment. Maiming is a form of assault and battery. This offence also has two degrees. It is either simple assault and battery, which is punishable by compensatory damages (Exod. 21. 18, 19), or it is aggravated assault and battery (of which maiming is one kind), which is punishable by vindictive damages to be assessed by the court (*pelilim*) (Exod. 21. 22).

The maxim in any of its forms contradicts the Hebrew law of homicide and of assault and battery. It also contradicts the pre-Hebraic Canaanite law of homicide, and probably of assault and battery, because it excludes *kofer*, or *wergild*, which was a recognized institution, against which the great law reform waged war.

That it was a mere forensic statement appended to the enunciation of a law, with which it had some fancied relation, seems clear enough. The law of Deuteronomy 19 proves it. The offence of perjury in a trial for the capital crime of *sarah* is made capital. The only punishment that could be inflicted was death. It was a new capital crime, and the promulgation of the law itself was followed by the argumentative use of this popular maxim. There could be no question of eye or tooth or hand or foot, and yet we have the whole catalogue. The object is plain.

It is as if the herald who proclaimed the statute had followed up his announcement by reminding them that the perjured witness was only getting his deserts according to the old maxim.

Its use in the Exodus statute is not for any other purpose. I have already indicated that the text is defective. It provides first for the punishment of simple assault and battery, without serious consequences, by compelling the assailant to pay for his victim's cure and for his loss of time (Exod. 21. 18, 19). It then provides for the corporal punishment of an aggravated assault on a slave resulting in death (Exod. 21. 20). Finally it punishes an aggravated assault on a woman which produces the death of an unborn child. The penalty is the payment of vindictive damages, and there the matter ends. That if the woman too should die, corporal punishment would follow, as in cases of manslaughter, is highly probable. By corporal punishment I mean either scourging or imprisonment.

The texts, however, are confused, and are made to say that the death of the unborn child does not change the character of the offence from simple assault to aggravated assault, because no *ason* (mischief, harm) results.

In the teeth of this saying there is the provision for vindictive damages, which is itself the sign that the law considers the injury serious. Then there is, too, the law that manslaughter, the actual killing of a man in hot blood or by casualty, is not to be punished with death.

Keeping this in mind, the idea that a man could be capitally punished who hurt a woman without malice aforethought and without intent even to strike her, is simply inadmissible. One may well suspect that some words

are missing from verse 23, which described an offence of great gravity, and also provided a severe specific punishment for it, and that the maxim was then invoked just as in Deuteronomy. But even if this very probable hypothesis is untrue, the maxim may have been quoted to point a case of damages merely.

This is exactly what has happened in the Leviticus text. He that killeth a beast shall make it good (shall pay for it) (*yeshallemennah*) *nefesh tahat nefesh*. The Authorized Version translates this leading phrase of the maxim *beast for beast*, instead of life for life. And the translation is a correct rendering of the meaning. It has, however, not been perceived that the text, after it announces a liability to pay money damages, quotes this very maxim by way of support. We have, in effect, a definition which declares that making good by a money payment a loss inflicted, is an instance of the application of the old maxim *nefesh tahat nefesh* (life for life). And this Leviticus text is the only one of the three which makes maiming (*mum*) a separate form of aggravated assault and battery which is to be punished in kind: 'As he hath done, so shall it be done to him' (Lev. 24. 19). And then follows the rest of the maxim: breach for breach, eye for eye, tooth for tooth.

That this has no other meaning than that money damages adequate to punish for the injury must be assessed against the aggressor, is certainly inferable from the apposition of *yeshallemennah* with *nefesh tahat nefesh*. So read we have simply the same law as in Exodus 21. 22, that in a case of aggravated assault and battery mere compensation will not suffice, but the judges are to assess vindictive damages against the aggressor proportioned to the gravity of the injury.

There is another thing that must not be overlooked. The maxim in its fullest form is found in the Exodus text, and follows hard on a piece of old Canaanite law (Exod. 21. 22-5). The Hebrew law of assault and battery

uniform, that in no event, whatever the result, can the penalty be death where the intent to murder is lacking. Moreover, the cardinal principle of Hebrew law is that everybody is equal before the law. The Code of Hammurabi, however, devotes six sections to the case of assault on a pregnant woman (Secs. 209-14). Five of these provide for the payment of compensation only, the sixth (Sec. 210) provides that if the victim be a gentleman's daughter, the assailant's daughter shall be put to death. We have already, in our first lecture, intimated that in later times this provision must have been interpreted, even in Babylonia and Assyria, to mean the payment of punitive damages, in addition to compensation. It is an offshoot of this piece of Babylonian woman-law which has somehow been preserved in our text, though it is in glaring contradiction to every principle of Hebrew law. The reasonable explanation is that among the old documents which went into the compilation of our books, odd pieces of *siḫne ha-'ir* law, having in them Canaanite admixtures, crept in and remained undetected, because they had become obsolete in practice.

There is just one other similar piece of Canaanite woman-law with retaliatory features. It is contained in Deuteronomy 25. 11, 12, and contrary to all Hebrew law and practice, prescribes mutilation, the cutting off of the offending hand, as punishment. It is, however, quite in line with the Hammurabi Code, which prescribed mutilation in no less than twelve sections (Secs. 192, 193, 194, 195, 196, 197, 200, 205, 218, 226, 253, and 282).

When we find obsolete Canaanite laws thus recorded, we need not be surprised to meet a popular Canaanite legal maxim, which everybody quoted at all times, with no definite meaning, but merely by way of illustration. The fullest version of the maxim accompanies the gravid woman's law of Exodus. In Leviticus the maxim is cut in two. Its first and most significant member, *nefesh tahat nefesh*, frankly means a money payment, and there is no good reason for attributing to the less significant phrases of the maxim a higher value than to its chief portion. In Deuteronomy its use as a mere illustration is palpably plain.

In determining what punishments were imposed by Hebrew law, we ought not to overlook Ezra's views on the subject. He was a *Kohen* and a thorough adept in the law, 'a ready scribe in the law of Moses'. He was a leader of his people and had very definite ideas on the subject of reconstructing the Jewish state in its pristine glory. He must have been a person of eminence, or otherwise he could not have obtained from Artaxerxes the liberal charter which authorized him practically to rule a new state which he was to found on the site of the old Judea of his fathers, there to administer the Torah of JHVH and to enforce its *hok* and *mishpat*. Moreover, in the year 450 B.C., there were better means of knowing and understanding the old law than are accessible to us. That the terms of the charter originated with Ezra, can scarcely be doubted. The document is in Ezra 7. 12-26. These are the words: And thou Ezra, according to the *hokmat elahak* which is in thy hands, set judges and *dayyanin* to judge all the people beyond the river for all such as know the laws of thy God, and as to those that

know them not, teach them. And whoever will not do the law of thy God and the law of the King, let judgement (*dinah*) be executed speedily upon him, whether for death (*le-mot*), for banishment (*lishroshi*), for amercement of goods (*la'anash niksín*) or for imprisonment (*csurin*).

The Authorized Version renders *shaftin we-dayanin*, magistrates and judges. There can be little doubt that the author was translating *shofetím we-shoṭerím* (Deut. 16. 18), and that therefore the rendering should be 'judges and officers', *dayyan* being the equivalent of *shoṭer*, who is the official that executes the judgement of the court in the manner of our sheriff.

The Ezra charter enumerates four kinds of punishment for criminal offences.

The Torah knows of six :

Death : (Exod. 21. 12).

Karet : (Gen. 17. 14 ; Exod. 12. 15, 19 ; 30. 33, 38 ; 31. 14, 15 ; Lev. 7. 20, 21, 25, 27 ; 17. 4, 9, 14 ; 18. 29 ; 19. 5-8, 13, 20 ; 20. 5, 17, 18 ; 22. 3 ; Num. 9. 13 ; 15. 30, 31 ; 19. 13, 20).

Amercement : (Exod. 21. 19).

Enslavement : (Exod. 22. 3).

Scourging : (Deut. 22. 18 ; 25. 2, 3 ; Lev. 19. 20).

Naḳom yinnaḳem : (Exod. 21. 20).

Two of these six (death and amercement), are plainly specified in the Ezra charter ; two others (enslavement and scourging ; a slave's punishment) had become obsolete by the emancipation law, leaving for consideration only *Karet* and *naḳom yinnaḳem*, which stand in the place of Ezra's banishment and imprisonment.

That *Karet* in the early ages meant banishment, is probable. The uncircumcised male (Gen. 17. 14) and

the man who flouted the celebration of the Exodus (Exod. 12. 15, 19; Num. 9. 13), were both to be cut off from among their people. These, however, were grave offences against national duty. The rite of circumcision was, in effect, the admission to the citizenship of the nation, while the Passover celebration was the symbol of the nation's birth which every patriot profoundly revered. That a man who failed in these respects was looked upon as a traitor, is not to be wondered at. Exile was not deemed too severe a punishment.

There are, however, many other cases calling for the punishment of *karet* which could not possibly have been punished by exile. Such cases are the following: eating the flesh of *shelamim* offerings while unclean (Lev. 7. 20, 21); eating the fat of a fire-offering (Lev. 7. 25); eating blood (Lev. 7. 27; 17. 14); killing an ox, lamb, or goat in the camp and not bringing it as a *korban* (Lev. 17. 4, 9); compounding an imitation of the holy oil (Exod. 30. 33) or the holy perfume (Exod. 30. 38); eating of *shelamin* offerings on the third day (Lev. 19. 5-8); committing certain improprieties (Lev. 20. 18); eating of the *kodashim* while unclean (Lev. 22. 3); failing to purify one's self when unclean (Num. 19. 13, 20).

These are all trespasses which would be adequately punished by temporary seclusion or excommunication. To have banished from the land all persons guilty of these ecclesiastical peccadilloes would have weakened the kingdom.

That *karet* at any time meant the death-penalty is highly improbable. Perhaps the strongest argument in favour of the view that it did, may be derived from the passages Exod. 31. 14, 15. In the former, one who works

on the Sabbath incurs the penalty of *karet*; in the latter, the penalty is death. This, however, warrants no other conclusion than that the latter provision is an amendment of the former. Indeed, there is distinct evidence that the law was changed in some such manner. In Num. 15. 32-6 there is a reported case of a man who gathered sticks on the Sabbath. The authorities seem to have been in doubt whether the offence was punishable. The oracle decided that the penalty must be death by stoning.

The conclusion would seem to be that the punishment of exile for working on the Sabbath was deemed impolitic, and that the death-penalty, which might be expected to prove a more effective deterrent, was at an early date substituted by way of amendment.

Karet may therefore be said to have two meanings, an older and a newer one; the former being exile, and the latter a lighter penalty to be borne at home for a limited period.

Ezra seems to have adopted the older *karet*, that is exile, for his new commonwealth, calling it *sheroshi* (up-rooting) in his Aramaic.

Ezra's *esurin* (imprisonment) has no parallel in the older law, unless it be found in the *naḳom yinnaḳem* of Exod. 21. 20.

These words are rendered by the Authorized Version: he shall be surely punished. No substantial objection can be urged against the mere translation of the words. Literal translations, however, are but slight helps to the understanding of technical terms. And that the term in question is technical, there is little room for doubt. It will be remembered that chapter 21 of Exodus contains a code of laws which prescribe specific punishments for

certain offences. For murder, death (21. 12); for smiting a parent, death (21. 16); for cursing a parent, death (21. 17); for injuring a man in a quarrel, compensation (21. 19); for smiting a slave with a rod which produces death, *naḳom yinnakem* (21. 20); for producing miscarriage, punitive damages ('*anosh ye'anesh*) (21. 22). The penalties are all specific, and there is no reason to doubt that *naḳom yinnakem* is likewise specific. The only difficulty is to discover what it was. That it was something more than punitive damages, is obvious. It must have been something affecting the person of the culprit with some severity. The particular term is unique, there being no other instance of its use. The root-word is, however, common, and it always denotes punishment of a serious character.

In Judges (15. 7 and 16. 28) Samson uses it to mean the slaughter of a multitude. In 2 Kings (9. 7) Elisha uses it to charge Jehu with the duty of destroying the whole house of Ahab. Jeremiah uses it to describe a day of JHVH's signal punishment of enemies (46. 10; 50. 15; 51. 36). By Ezekiel it is used in a similar sense (Ezek. 25. 15), as also in Esther (8. 13).

That it cannot mean death is apparent from two facts: first, the offender did not intend to kill the man, and was therefore guilty only of manslaughter, and second, the same code uses the technical term *mot yumat* in the several cases when the offence is capital. It is true that the Talmud (Sanhedrin 52 b) construed it to mean 'death by the sword'. Its argument, however, though ingenious, falls before the two facts already stated.

Nor is it likely to mean banishment from the land, which is nearly as severe as the death penalty, and is moreover already provided for under the name of *Sheroshi*. The fact

that a new crime was being created by law must not be forgotten. Before this law the fact that the slave died under his master's correction was no man's concern. In the Code of Hammurabi the death of the slave rendered the slayer liable to give the bereaved master another slave in his stead. Other consequences there were none. If, therefore, the master lost his slave by his own act, it was his own money he was losing. This is good Babylonian law, and it is one of the ironies of history that when the Hebrew law fought this system, and won its first great triumph over it, the record should be disfigured by the intrusion into it of the Babylonian principle which it had just overcome: 'The slave is but the master's money' (*kaspo hu*) (Exod. 21. 21). It and the *lex talionis* maxim, which follows hard upon it (21. 23-5), are both of them good Canaanite law. They are, however, in direct contradiction of Hebrew law.

On the other hand, it was not to be expected that extreme punishment should be inflicted for an act which men had just begun to look upon as an offence. This view would negative banishment as the punishment meant by *naḳom yinnakem*.

Scourging, on the other hand, was in ancient Israel fit punishment only for children, slaves, and paupers, and would not be thought of for men of good condition. Only for one offence, and that an infamous one, was the punishment imposed on a freeman (Deut. 22. 18). And to this effect writes Josephus (*Ant.*, Book 4, ch. 8, Sec. 21): The punishment of stripes is a most ignominious one for a freeman.

It need not therefore be thought of in this connexion. This leaves for consideration only the question of im-

prisonment. There is a very common belief that the ancient Hebrews did not know deprivation of liberty as a punishment for crime. Against the correctness of this supposition there is a mass of evidence which has not been sufficiently weighed.

Very significant is the fact that there are eight several Hebrew words denoting prisons, and, moreover, two of these words are used in varying forms :

1. *ha-mattarah* is used by Jeremiah (32. 2, 8, 12; 33. 11; 37. 21; 38. 6, 13, 28; 39. 14, 15); and Nehemiah (3. 25; 12. 39).

2. *Masger* is used by Isaiah (24. 22; 42. 7); and by the Psalmist (142. 8).

3. *Bet ha-peḳudot* is used by Jeremiah (52. 11).

4. *Bet ha-bor* is used in Exodus (12. 29); and by Jeremiah (37. 16).

The variant form *bor* is used by Isaiah (24. 22); by Jeremiah (38. 6, 7, 9, 10, 11, 13); and most significantly in Proverbs (28. 17): A man oppressed by blood-guilt (*dam-ncfesh*) will flee (*yanus*) to the *bor*; let no man stay him.

5. *Mishmar* is used in Genesis (40. 3, 4, 7; 41. 10; 42. 17, 19); in Leviticus (24. 12); in Numbers (15. 34): 'And they put him in *mishmar*, since it was not declared what should be done to him.' In Proverbs (4. 23): 'As in any prison (*mishmar*) guard thy heart; for out of it are the issues of life.'

6. *Bet ha-sohar* is used in Genesis (39. 20, 21, 22, 23; 40. 3, 5).

7. *Bet ha-asirim* (M.T. *asurim*) is used in Judges (16. 21, 25).

The variant form *bet ha-esur* occurs in Jeremiah (37. 15), and the form *bet ha-surim* in Koheleth (4. 14).

8. *Bet ha-kele'* occurs in 1 Kings 22. 27 ; 2 Chron. 18. 26 : Put this man in prison (*bet ha-kele'*) and feed him on bread and water. And Jeremiah uses it (37. 15, 18).

The variant form *bet ha-keli'* (M.T. *bet ha-kelu'*) occurs in Jeremiah 37. 4 ; 52. 31 ; while the form *bet-kele'* is used in 2 Kings (17. 4 ; 25. 27), and in Isaiah (42. 7) : ' To open blind eyes, to bring the prisoner (*assir*) from the *masger*, the dwellers in darkness (*yoshebe hoshek*) from the *bet-kele'*.'

Besides these undoubted names for prison, the Authorized Version gives *prison-house* as the rendering of *bet ha-mahpeket*. King Asa being wroth with Hanani, the seer (*ro'eh*) put him into the *bet ha-mahpeket* (prison-house) (2 Chron. 16. 10).

When Pashhur, the priest, was angered with Jeremiah for his prophecies, he put him in the *mahpeket* by the upper Benjamin-gate (Jer. 20. 2). A. V. here renders not ' prison', but ' stocks'.

The word occurs but once more. Shemaiah, the Nehelamite, who prophesied in Babylon in a sense contrary to Jeremiah's prophecies at Jerusalem, wrote to the priest in the latter city to put Jeremiah in the *mahpeket* and in the *šinoḳ* (Jer. 29. 26), that being the proper place for a *meshugga'* (madman) who prophesies.

This mode of branding a prophet whose utterances are displeasing was not a new thing. Hosea (9. 7), reproaching his age, charges them with calling the *nabi* a fool (*ewil*) and the inspired man (*ish ha-rual*) a madman (*meshugga'*). And even in our own day the same phenomenon occurs. A statesman who advocates measures we do not like is often called a paranoiac.

The fact is clear that the *mahpeket* is spoken of only in connexion with prophets whose utterances are distaste-

ful to those in power, and who are by the latter branded as madmen. The conclusion would seem to be that the *bet ha-mahpeket* was a place for the detention of lunatics, rather than a house of punishment for criminals. Exactly what *šinok* means is doubtful. A. V. renders 'the stocks', but as the word occurs but this once, we can be certain only that it means some place or instrument of restraint.

The common notion that the ancients had no separate institutions for the sick may be questionable. The obscure text (2 Sam. 5. 6, 8), which describes the capture by David of the fortress of Jebus, speaks of the Jebusites' defiant cry to David that unless he could reach the *šinmor* and capture the blind and the lame, he would never enter the place. The *šinmor* was apparently built on the highest point of what was afterwards the city of David, and the inference is reasonable that it was a place where the blind and the lame were kept. It may be that the *šinmok* of Jeremiah and the *šinmor* of Samuel are not totally unrelated. Whether the account was historically accurate or was merely legendary by way of explaining the origin of the later law that 'the blind and the lame shall not enter the temple' (*'iver u-piseah lo yabo el-ha-bayit*: 2 Sam. 5. 8; cp. Lev. 21. 18), is a question. In any event, the narrative seems to indicate familiarity with the idea of segregating persons afflicted with certain infirmities.

There is probably still another name for prison, though the translators have hitherto not recognized it. It is *bet ha-asupim* (1 Chron. 26. 16). The Authorized Version takes *asupim* for a man's name, while the Revised Version renders 'the storehouse'.

Sufficient regard has not been paid to the instances

in which *asaph* means 'to imprison'. Joseph put his brothers (*wa-ye'esoph*) into *mishmar* for three days (Gen. 42. 17).

As prisoners are imprisoned, they will be imprisoned in a dungeon, will be shut up in a jail (*we-ussephu asephah assir 'al-bor, we-suggeru 'al-masger*) (Isa. 24. 22).

That there was in Jerusalem a house of detention (which we would call a police station), to which persons arrested for trivial offences were consigned, would appear from certain passages in the Song of Songs, and this may have been the puzzling *bet ha-asupim* of 1 Chron. 26. 16. When the lady of the song dreamed that she went forth by night to look after her beloved, she found him not, but encountered unsympathetic policemen on their beats (*shomerim ha-sobebim ba-'ir*), who arrested her (*meša'uni*). She was, however, soon released (*kin'at she'abarti mehem*) (Song of Songs 3. 3, 4).

The current translations do not say 'they arrested her', but give the rendering 'they found' her, on the theory that *maša'*, which usually means to find, does so in this instance. The word also has the meanings to catch, to arrest, to acquire, to take or receive. A burglar caught in the act (Exod. 22. 1 (2)), and a thief caught after the act, are both *yimmaše'* (Exod. 22. 6, 7 (7, 8)). The men who caught and jailed the Sabbath-breaker were *moše'im wa-yimše'u* (Num. 15. 32, 33).

The booty acquired in war is *maša'* (Num. 31. 50) All that a man has acquired (his whole estate) is *yimmaše'* (Deut. 21. 17).

Here are other instances :

If a man catch (*yimša*) his enemy, will he let him go (1 Sam. 24. 19).

They caught (*wayimṣen*) an Egyptian and brought him to David (1 Sam. 30. 11).

Was Israel caught (*nimṣa'*) among thieves? (Jer. 48. 27).

I will surrender (*mamṣi'*) them each unto his neighbour's hand (Zech. 11. 6).

If the thief be caught (*we-nimṣa*), he must pay seven-fold (Prov. 6. 31).

And he saith: Do not lower him into the pit. I have taken ransom (*maṣa'ti kofer*) (Job 33. 24).

In the Canticles, therefore, the lady dreams that the police arrest her, but do not detain her long (3. 3, 4). In her next dream, however, she is not so fortunate. The policemen not only arrest her, but beat and wound her, and give her in charge to the policemen of the wall (*shomere ha-homot*), who use her roughly, rending her dainty veil or mantle (5. 7). One may well believe that the policemen of the wall had a station to which the policemen arresting persons whom they considered disorderly, took their prisoners. At the station the prisoners were of course examined, and any endeavour to avoid identification by covering the head or face with veil or mantle, would result in damage to the garment.

That the walls of cities were thoroughly policed, and that they had houses built on them, is certain.

I have appointed *shomerim* upon thy walls, O Jerusalem, who will not be inactive (*lo yeḥeshu*) by day or by night (Isa. 62. 6).

When Rabshakeh shouted the menaces of Assyria to the ministers of the king of Judah, the latter prayed him to speak in the Aramaic tongue, so that those on the wall would not understand. Rabshakeh, however, rudely insisted on addressing his menacing words to the *yoshebim*

on the wall, their purport showing that he looked upon them, not as a rabble of idlers, but as having authority to influence Hezekiah's actions (1 Kings 18. 27 ; Isa. 36. 12).

We may, therefore, fairly conclude that the wall of Jerusalem had a police station to which the *shomerim* brought their prisoners, who were tried by the *yoshebin* there sitting. Such police courts are not otherwise unknown. There was such a court in one of the prisons in the city itself, where the sale of certain land in Anathoth to Jeremiah was duly acknowledged before the *yoshebin* that sat in the prison court (Jer. 32. 12).

Whether the lady of the Canticles was or was not in the police station of her dream-city, is, after all, of no great importance. When we remember that there are at least eight acknowledged names for prison in the Hebrew language, it is no longer to be doubted that the prison was an institution of which everybody had knowledge. Indeed, in the two capital cases for which there was no precedent, and which puzzled Moses and the 'Edah, the accused were both imprisoned pending the determination of the issue (Lev. 24. 12 ; Num. 15. 34).

Assuming, then, that imprisonment (deprivation of liberty) was well known to the ancient Hebrews as a mode of preliminary or final punishment, the question arises whether the Exodus Code provides for its imposition. That the loss of liberty was known to the Code would appear from the provision (21. 13) for a *ma'om*, to which one guilty of manslaughter would go. This certainly means that the defendant could not stay at home, that he would have to go to an appointed place and live there.

This is not a bad definition of a state-prison, however the details of its management may differ from those of

analogous modern institutions. That the separated city of Deuteronomy and the *'ir miḳlaṭ* of Numbers, which succeeded the *maḳom*, were prison-cities, we think has been demonstrated. It is not, therefore, difficult to believe that a person whose offence was an inferior kind of manslaughter, would, as a punishment, be deprived of his liberty for a time.

The *go'el ha-dam* and the *'ir miḳlaṭ* both ceased by the time of Jehoshaphat. *Shofeṭim* and *shoṭerim*, federal appointees, were placed in each canton (*'ir*). If there had been no prisons before, they became indispensable then. The evidence adduced warrants the conclusion that they were not a sudden invention. The tradition implied in the multiple names for the institution, is perhaps better evidence than a direct written statement would be.

In this connexion it is pertinent to quote once more the Proverb (Prov. 28. 17):

A man oppressed by blood-guilt must go to prison. Let no man stay him.

The translation here given is not that of the versions, all of which fail to perceive that the word *bor* in the text means prison, being used in that sense in Exodus (12. 29), by Isaiah (24. 22), and by Jeremiah (37. 16; 38. 6, 7, 9, 10, 11, 13). So read, it is a popular legal maxim, just as if we would say: Never be bail for a murderer. Indeed, the Septuagint comes very near to adopting this as the translation.

On the whole, it is probable that the man whose slave died under his rod was punished by imprisonment, and that this is what is meant by *naḳom yinnaḳem*.

Before closing the investigation, a word should be said about the passages in Genesis bearing on the subject of homicide (Gen. 4. 8-16; 9. 5, 6). They are, as has been

said, no part of the legal literature. Cain slays his brother, perhaps in the course of a heated argument. So put, the offence was, according to the law of Exodus and the rest, mere manslaughter. The punishment decreed is that he can no longer remain in the land where the offence was committed. He must leave his home and live elsewhere. The terrors of exile are greater than he can bear, and JHVH sets a mark on him which will diminish its perils. The sentence, however, is not modified. Cain left and dwelt in the land of Nod to the east of Eden.

In God's instruction to Noah and his sons after the Deluge, homicide is dwelt upon. He who kills a man must answer for it. Even a beast must answer for the blood of a man. And the whole community is responsible for bloodshed (*mi-yad ish aliyv edrosh et-nefesh ha-adam*). And then the general principle is laid down: Whoso sheddeth man's blood (*shofek dam ha-adam*), by man shall his blood be shed.

In all this there is nothing to run counter to the Hebrew law of homicide as we have explained it. The words *shofek dam* may be taken in either one of two senses. They may refer to wilful murder, which must be punished by death, or the principle announced may have no reference whatever to human law. The seer, pondering on the problems of the world, may reflect that bloodshed, whether from malice or by misadventure, always brings misfortune in its train. The Talmud has the same philosophy: With what measure ye mete, so shall it be meted unto you (Sotah 8 b). God's justice is measure for measure (*middah ke-neged middah*) (Sanhed. 90 a). And Shakespeare more than once utters a similar thought. In his *Measure for Measure* he makes the Duke say:

'The very mercy of the law cries out
Most audible, even from his proper tongue,
An Angelo for Claudio, death for death,
Haste still pays haste and leisure answers leisure,
Like doth quit like, and measure still for measure.'

(*Measure for Measure*, Act 5, Scene 1.)

And in the third part of *Henry VI* (Act 2, Scene 6), the Earl of Warwick speaks :

'From off the gates of York fetch down the head,
Your father's head, which Clifford placed there.
Instead whereof, let this supply the room ;
Measure for measure must be answered.'

Whether the passages be legal or philosophical, or a mixture of both, the law is always kept in view. That a beast must answer with its life for the blood of man, is the express provision of the statute (Exod. 21. 29, 32). That the whole community incurs blood-guilt when one man murders another, has, we think, been proved in the second lecture. That the perpetrator himself must suffer is a thing of course.

One fact should, however, be kept in mind. *Shofek dam* was rather a literary form than a legal term. Isaiah so uses it in describing the general decadence of morals (Isa. 59. 7) ; Jeremiah does the same (Jer. 7. 6 ; 22. 3, 17), as does Joel (4. (3). 19). This use has even become proverbial (Prov. 1. 16 ; 6. 17).

We have now reached the end of our inquiry, and it remains for us to give a brief summary of its results.

About 1280 B.C. Israel, under the leadership of Joshua, crossed Jordan to enter upon the conquest of Canaan. The conflict thus precipitated was not merely physical ;

it was in a greater degree political or social, and moral or religious. Two antagonistic systems of life were facing each other. The Canaanites represented the antique civilization of Western Asia; they had cruel gods and cruel laws, despotism prevailed, slavery was the cornerstone of their institutions. The Hebrews, on the other hand, held that freedom was the true basis of a state, and law and justice its purpose. In their scheme despotism had no place. The chiefs of the state, by whatever name known, could not hold office without the assent of the people, nor could they rule by mere will or caprice, but by law.

The Hebrews finally triumphed, though the contest was long and bitter. By the year 1050, a fairly settled commonwealth had been established under the rule of the priest-shopet Eli. He was succeeded by Samuel, in whose time the headship of the state was transferred to a king, Saul of the tribe of Benjamin (c. 1020 B.C.). It was not, however, until a quarter of a century later that Israel was thoroughly united under the reign of David.

During the three centuries between the crossing of Jordan and the hegemony of David, the state was being slowly cemented. The numerous city-kingdoms into which it was divided at the conquest, were deprived of their kings and converted into cantons or counties of the state. These were called *'arim* (cities) and were governed by cantonal councils called *zikhne ha-'ir*. To these were confided administrative and judicial powers, which were to be exercised in harmony with the federal constitution and laws. The better to effect this purpose, *Levites and nabi'im*, agents of the central government, visited the

several cantons for the purpose of instructing and otherwise aiding the local councils in their work.

These measures, however, did not prove adequate. The subtle influence of native customs and ideas affected the cantons, especially those in the remote districts. The worship of JHVH was neither orthodox nor exclusive. Canaanite ideas, religious and legal, were absorbed, and a hybrid system resulted, which threatened to imperil church and state.

In course of time, certain branches of jurisdiction were withdrawn from the local councils and assumed by the central government. Homicide was not, at first, one of these. It was at a later period that the conflict concerning the law of homicide became acute.

We do not know by direct evidence what the Canaanite law on this subject was. There is, however, indirect evidence. The laws of the Babylonian Hammurabi (*c.* 2250 B.C.) are now accessible to us, and from them may be derived a fair estimate of the legal notions prevalent in Western Asia at that early period. The publication, it is true, antedated the crossing of the Jordan by a thousand years, and it might fairly be supposed that they had become, in great part, outworn. Before passing judgement on this point, we must remember that fifteen hundred years after their publication, they were still studied in Assyria, and five hundred years after that were made a text-book in the Babylonian schools. This shows, at least, that the leading principles of the Code were still accepted, however changed it may have been in some of its details. It is true that we have no direct knowledge that the people of Canaan ever accepted this Code. The intrinsic probability that it influenced them is, however,

considerable. Moreover, there are certain Canaanite admixtures in the Torah, which have already been dwelt upon, which seem to point directly to the Hammurabi Code.

Our other indirect evidence is the Torah. We know its legal principles, and when we find them in energetic conflict with hostile principles, it is fair to conclude that the latter are derived from the Canaanite law.

Guided by these helps, we infer that by the Canaanite law of homicide, the killing of a man was not a crime cognizable by the state, but a trespass, which gave the family of the deceased a right to redress. There was no inquiry as to the motive, and there were no degrees of liability. This absolute right of redress in prehistoric times was the right to kill the perpetrator or an equally important member of his family. When the perpetrator was killed, a right accrued to his family to seek redress, and so it went on in a continuing series. This state of affairs we call blood-feud or vendetta.

When the Hebrews entered Palestine, this stage had long been passed by the Canaanites. While the blood-feud persisted in theory, it was rendered practically nugatory by the custom of compounding the trespass for money instead of blood. Such money payment was called *kofer*, our English 'wergild'. The procedure apparently was something of this fashion: The bereaved family impleaded the slayer before the *siḡne ha-'ir*. The only question before them was whether the accused killed the man; the how or why mattered not. If he was condemned, the representative or *go'el* of the family received a legal warrant to kill him, unless the matter should be properly adjusted. If there was to be chaffering about terms, the culprit

sought sanctuary in a *maḳom*, probably the capital city of his 'ir, though there is reason to believe that a *maḳom* in any other 'ir would have availed as a safe place of refuge. From this vantage-point the bargaining was conducted, the *maḳom*-priest being the most likely and convenient intermediary. Unless the culprit and his family were very poor, the matter was usually adjusted. The *go'el* who represented the family, was naturally interested in improving their estate, since, if they came to want, they would look to him for help. The *maḳom*-priest of course expected an offering for his *maḳom*, if he were honest, and if the reverse, a honorarium for his services would not have been unwelcome. These were all the parties concerned, as the state took no cognizance of the crime.

With this law the Hebrew law came in conflict. It declared that homicide could never be a trespass (a mere private injury). It was an offence against God and the state, and its gravity in this aspect was such that all minor interests like those of the family, were wiped out and annulled. The sanctity of human life was the great principle, and it had to be applied thoroughly. Its benefits were accorded to the defence, as well as to the commonwealth. Killing was not necessarily murder. It might have been due to casualty, to misadventure, to an unthinking blow given in hot blood. In such cases it was ranked as manslaughter, for which the punishment was internment away from home in a *maḳom*, or later in a separated city, still later in an 'ir *miḳlaṭ*, and finally in a common prison. When the killing was with intent, with malice prepense, it was murder, and the sole penalty was death.

With such principles *kofer* was irreconcilable. No

guilty man could escape by its means. If a murderer, he must die; if a manslayer, he must suffer segregation. Money could not buy off either penalty.

The Canaanite law and the Hebrew law were thus in crass opposition. Use and wont are powerful forces. The *zikne ha-'ir* were affected by them, and murder must often have gone unpunished, save by the enforcement of money damages. The federal legates (Levites and *nebi'im*) doubtless secured some measure of respect for the law. In the turbulent times, before the throne of David became secure, this was probably all that could be accomplished. That great warrior-king, after a life of turbulence, saw clearly that what his kingdom needed was rest. In his solemn charge to his successor, he declared that the word of JHVH had come to him, announcing a son who should be a man of rest (*ish menuḥah*), in whose days there should be peace and quietness (*shalom wa-sheḫet*) in Israel (1 Chron. 22. 8, 9).

And Solomon cherished this ideal. So long as the powerful barons could murder for money, there would be no peace in the land. Then began the earnest and determined course of law reform which we have endeavoured to describe.

The first step was the abolition of the right of sanctuary. As the *go'el* could now drag the murderer from the altar, there was no opportunity for protracted negotiation. The *go'el's* demands, however ruinous, would have to be complied with. However well designed the measure, it did not accomplish its purpose. An ingenious *maḳom*-priest, an indifferent or perhaps friendly *zikne ha-'ir* council, and a *go'el* keener for money than for blood, could easily manage to defeat the purpose of the government.

The next step was more drastic. The *maḥom* with its priest, and the family *go'el* were all eliminated. The right of sanctuary for homicide was done away with. A new federal officer, the *go'el ha-dam*, was sent to each canton to watch the proceedings and to receive the death-warrant for execution from the *ziḳne ha-'ir*. Separated cities were fixed upon as places to which the convicted murderer would go for his appeal, and if he was a mere manslayer to serve a term.

In this arrangement there was but one weakness. The separated cities had their *ziḳne ha-'ir* who were in friendly relations with many other local councils, and who, moreover, were not free from the taint of Canaanite assimilation.

It would appear that this statute was often evaded by the obstinate adherence of the people to the practice of *kofer*, sometimes in murder and often in manslaughter. There seemed but one way to remove the difficulty and to assure the execution of untainted federal law.

This was the course pursued: Forty-eight cities were selected, jurisdiction over which was to be abandoned by the respective cantons, and ceded to the federal government. These were the Levitical cities, inhabited by persons whose allegiance to the federal government and its laws was unquestionable. From among these the 'are *miḳlaṭ* (detention-cities) were selected. The *ziḳne ha-'ir* of these cities were, of course, Levites who were capable and willing to enforce the Hebrew law. A national court (the 'Edah), sitting at Jerusalem, heard the appeals. In this system every weakness was eliminated, except only that the *ziḳne ha-'ir* of the several cantons were still the court of first instance. True, they had federal assessors (Levites, *Kohanin*) and a federal sheriff (the *go'el ha-dam*),

and one might fairly believe that in such circumstances they could not find a loophole to evade the enforcement of the federal law, especially as there was now an express statute forbidding *kofer*, both in murder and in manslaughter cases.

It is, however, this statute which gives the clue to the defect in the system. The common people, the family *go'el* and the *šikne ha-'ir* were still favourable to the practice of compounding the felony of homicide for money.

That the system, carefully guarded as it was, did not perfectly succeed, may be taken for granted. In more modern times and nearer our own homes, we are not totally free of the sentiment which prefers large damages to convictions for manslaughter. It was Jehoshaphat who finally tore up *kofer* by the roots. I have in a previous lecture described how he abolished the jurisdiction of the *šikne ha-'ir* in cases of homicide, by establishing federal courts and sheriffs in every canton, with a supreme appellate court at Jerusalem.

Thus was the final victory for Hebrew law won after a protracted contest lasting a century. At last, about 850 B.C., every man knew that the element of civil damages or private satisfaction was eliminated from homicide cases, and that the state alone had jurisdiction of this high crime.

And now one final word. I am well aware that there is room to question many of the definitions suggested and hypotheses propounded in these lectures. It would be unreasonable to hope for ready acquiescence in views that run counter to inherited opinions. Many will think the whole scheme of positing a life and death contest

between Canaanism and Hebraism audacious ; more, perhaps, will look scornfully upon the endeavour to date one of its most important manifestations, and to trace its progress. With them I have no quarrel. The endeavour has been to look at the facts honestly and without prejudice.

If the labour, which has been one of love, helps an earnest student, here and there, to a better understanding of the Hebrew law of homicide, makes clearer the function and short duration of the *'ir miḳlat*, strips the grisly features from the Avenger of the Blood, and moves the Hebrew *lex talionis* from the solid ground of history towards the shifting sands of fable, it will have accomplished its purpose.

RECENT ASSYRO-BABYLONIAN LITERATURE

Hebrew and Babylonian Literature. The Haskell Lectures delivered at Oberlin College in 1913, and since revised and enlarged, by MORRIS JASTROW, Jr., Ph.D., Professor of Semitic Languages in the University of Pennsylvania. New York: CHARLES SCRIBNER'S SONS, 1914. pp. 376.

Professor Jastrow, the noted exponent of Babylonian-Assyrian religion, has given us a highly interesting book. Though the problems under consideration have continually occupied the attention of scholars, and have been discussed from all points of view, since the decipherment of the cuneiform inscriptions, yet under the genial treatment of the author, even well-known views assume a different aspect which arrests the attention of the reader. It looks as if the author, like some other scholars, has not remained quite untouched by the gentle wave of conservatism which in recent years made its appearance in the scholarly world. His book seems to present an attempt at reconciling opposite views of the moderns and the conservatives. By this treatment, certain inconsistencies and an appearance of eclecticism are unavoidable. But we earnestly hope that what the author says about the Hebrew traditions will become true of all the scholars who feel that higher criticism is not the path leading to truth, and yet still linger at the cross-way: 'We cannot expect a sudden departure from the normal.' The ideas which we consider inconsistencies are due to 'survivals of older views'.

The aim of this work is to give some of the aspects presented by a comparison of the Hebrew and Babylonian civilizations. The author has as little sympathy with those who draw comparisons to prove the dependency of Hebrew ideas upon those of Babylonia-Assyria, as with the conservatives whose sole aim

appears to be towards securing confirmation of the data presented by biblical records. He holds that we must apply to both the Hebrew and Babylonian traditions the factor of evolution and the assumption of a progress in religious thought. The Hebrews were subject to outside influences, like all other ethnic groups. The differentiating factor in their history is to be found in the outcome and not in its beginnings. Gradual growth must be assumed, and not a sudden departure from the normal. But the former involves survivals of older views and customs. We must therefore trace the process of growth in both traditions to show how far older views survived, and how far they were replaced.

But the fact that the Babylonian religious ideas, since the days of Hammurabi, to say the least, did not undergo any perceptible change, and thus for a period of about two thousand years remained stationary, apparently disproves the author's assumption of a gradual growth. It is true, the author anticipated this objection in his remark: 'The materialistic aspect of Babylonian and Assyrian civilizations prevented the fuller development of an ethical and spiritual factor in the growth of religious thought' (p. 220). However, the author will not maintain that the religions of the Egyptians, Phoenicians, and of all other ethnic groups in the vicinity of Israel were less materialistic than that of the Babylonians. Hence, if he is right 'that at one time the Hebrews shared, to all practical intent, the religion of their surroundings' (p. 25), the exceptional development of Israel's religious thought must either be considered a sudden departure from the normal, or we will have to assume that from the very beginnings of Israel's history there were no materialistic factors in its religious conceptions. Both assumptions are highly improbable. Thus, in this way, we will never arrive at the solution of the problem. We have to reckon with the factor of personality. The Hebrew ethical and spiritual conceptions did not develop among the people, but were carried into it and maintained, under the worst conditions, by the great personalities of Israel.

The book consists of five chapters and an Appendix. The first chapter deals with the relations between the Hebrews and Babylonians. The agreement between the traditions of both regarding the stories of the creation and deluge is due to the early contact when the Terahites emigrated from Ur, and not to that in the captivity. The Hebrews were in no mood to assimilate ideas from those who appeared to them in the light of ruthless destroyers. This opinion was already expressed by Renan in his *History of the People of Israel*. Besides, the religious thought of the masses was too advanced, even in the eighth century, to take up traditions which arose among a people in an early state of culture. They were incorporated, because they formed for many centuries part and parcel of the people's traditions. When they were submitted to the new ideals set up by the prophets, their original character was modified, until in the post-exilic period they assumed their present literary shape.

But if the Hebrews did not take over these stories in the captivity, what reason has the author for his assertion that their present literary shape was fixed in post-exilic times? The contention that the religious thought of the Hebrews in the eighth century was more advanced than that of other nations is not borne out by the biblical records. The prophets accuse them of idolatry and of all possible vices. Admitting the factor of evolution, was not there plenty of time for the growth of religious thought from Hammurabi to Moses?

The second chapter discusses the Hebrew and Babylonian accounts of creation. Several versions of them were current among both the Hebrews and Babylonians. The second Hebrew version has few points in common with the Babylonian versions, while the first contains many points of resemblance to the main type of the Babylonian creation stories. In the second, however, there is still a trace of the earlier materialism, while in the first, all traces of any materialistic aspects have been intentionally removed.

Seeing, however, that in the second version which belongs to a far less advanced period than the first, all traces of nature-

myths had been removed, we do not comprehend why the post-exilic compilers of the Priestly Code did not do the same in the first version. The author's suggestion, that the compiler did not wish to cut himself loose from popular traditions, is improbable. If the first version originally contained myths, they must have been distinct and plain as in the Babylonian stories of creation. In the former, however, in its present shape, the myths are so hidden and veiled that no scholar ever thought of them before the decipherment of the cuneiform inscriptions. Therefore, we can hardly believe that the contemporaries of the compiler were so sagacious as to recognize in his version their ancient favourite tales. The only myth we can find in the Priestly Code is its mythical existence.

In the third chapter, the author raises the old question, whether the Babylonians had an institution similar to the Hebrew sabbath. He answers it in the affirmative, but holds that the Hebrew sabbath is an expression of religious ideas utterly distinct from those which we find in the Babylonian religion.

However, as far as the biblical records are concerned, this question ought never to have been raised. The very fact that sabbath is connected with the creation of the world shows that the Bible does not claim it to be specifically Hebrew. Sabbath was observed before the promulgation of the Decalogue. Thus it must have been an ancient Semitic institution, the preservation of which is solely due to Israel. For this institution it is quite irrelevant whether the Babylonians had a similar day of rest.

The two last chapters deal with the views of life after death and the Hebrew and Babylonian ethics. The early conception of *sheol* 'hades' among the Hebrews differed in no essential point from that among the Babylonians. In all periods of Babylonian history we find the relationship to the gods never rising above a materialistic level. Their limitations of ethics show themselves also in what they regarded as the real aim of life: material blessings. The Hebrews started out with no

better equipment for the development of ethics than the Babylonians or any of the nations by which they were surrounded. But they rose superior to their surroundings. The prophets' conception of sin and atonement contrasts with that which we find in Babylonian penitential compositions. The sin implied in the latter is the neglect of some rite or some festival, while in the former, the thought throughout is that sin can only be forgiven, if there is a disposition to lead a life pleasing to a righteous power.

But it is beyond doubt that the Pentateuch, like the Babylonians, regards material blessings as the real aim of life, being the only reward promised Israel for its obedience to the Divine commandments. The prophets could not have had a superior conception. They threaten Israel for its disobedience to the law with the loss of the material blessings. What else can we expect? A distinction between material and spiritual blessings presupposes a pure conception of life after death and the doctrine of personal retribution. If these doctrines had not yet been developed, what else could have been the aim of life, if not material blessings? If, however, the conception of the prophets was more spiritual than that of the Mosaic Code, this fact alone ought to be regarded as incontrovertible proof that the latter dates from an earlier period.

As to the Babylonian conception of sin and atonement, it would be wrong to assert that the Babylonians did not include ethical faults and failings in their idea of sin. The *Shurpu* Series enumerates all possible transgressions on account of which the gods turn away from the sinner, and the demons take possession of him and plague him with all kinds of diseases. Thus, on this point, there is hardly any difference between the Hebrew and Babylonian conceptions. However, it seems that in the Babylonian religion, the sinner was forgiven social crimes without being required to make amends, while in that of Israel, sins of this kind could not be expiated without making amends.

In the Appendix, the author discusses the Hebrew and Babylonian accounts of the deluge, and deals especially with

the version found by Dr. Poebel in the Museum of the University of Pennsylvania, which he regards as the prototype of that on the eleventh tablet of the Gilgamesh Epic. But this version is written in Sumerian, and it is very precarious to draw conclusions from a Sumerian text, as the science of Sumerology has not yet quite outgrown its infancy.

Die biblische und die babylonische Gottesidee. Die israelitische Gottesauffassung im Lichte der altorientalischen Religionsgeschichte. Von D. Dr. JOHANNES HEHN, o. Professor an der Universität Würzburg. Mit 11 Abbildungen. Leipzig: J. C. HINRICHS'SCHE BUCHHANDLUNG, 1913. pp. 436.

The present volume deals with the frequently ventilated question, whether the biblical conception of the godhead is similar to that of the Babylonians and other oriental nations. It is a work of high scientific value, and its results will radically influence biblical research in that direction. The literature is consulted on all points concerned. It, therefore, contains such an amount of information on this subject hardly to be found elsewhere. The discussion of the various theories is absolutely fair and free from bias. Though the author on the vital points seems to be rather conservative, his book does not make the impression that he is looking for confirmation of preconceived points of view. The book consists of six chapters which discuss so many subjects of high importance that it is hardly possible to present a succinct summary of their contents. We can give only a few of the salient points and leading ideas.

The first chapter outlines the fundamental views of the Babylonians on the essence of the Godhead. The universe is governed by an infinite host of personal powers. In an earlier stage of culture, they were thought of as being within the cosmos; later, however, the latter became personified in the triad Anum, Bêl and Ea. Babylonian cosmogony being theogony, their cosmology must needs be theology. The multitude of the divine beings continually grows with the recognition and conception

of the powers of nature as separate elements. The solar planet being the centre of life, such a religion must be in the first place a solar cult. Though an astral religion, there is a dualism in the conception of the gods, they being conceived as persons and at the same time as stars in heaven. The Babylonians never succeeded in completely personifying them. The sexual differentiation in nature is reflected in the conception of masculine and feminine deities. Being persons, the gods had to be equipped with all human qualities.

The second chapter deals with the position of the Babylonians towards monotheism. The tendency of the Babylonian theology being specification of the elementary powers and consequently continual increase of deities, monotheistic tendencies are not to be expected. However, there is a certain inclination towards pantheism. 'The totality of the gods' is represented by the septenary supreme power, the seven planets. Notwithstanding this amalgamation, the other gods do not lose their separate existence and independent position. As to the attributes of the gods, Anum is the sum total of the godhead, theoretically at least; Enlil is the representative of sovereignty; Ea is the personification of the principle of wisdom and of the power of creation; Nannar appeared in a certain period as universal godhead. But there was practically a solar monotheism—the most prominent gods being solar deities—as well as a national monotheism, as the deity of a certain territory occupied there the highest position. Now and then we find also an 'affective' monotheism, that is to say, a certain deity became supreme on account of being preferred by a certain ruler or in a certain period. The transfer of attributes from one deity to another played a prominent part. By this procedure many of the gods became in every respect identical.

The third chapter investigates the relations of the religious beliefs of the peoples of Western Asia to the Babylonian religion and their attitude towards monotheism. The claim that the fundamental religious conceptions of the Semites originated in Babylonia is neither historical nor psychological. Similar

physical and cultural conditions will develop independently a similarity of religious conceptions. Certain forms, however, show distinct traces of Babylonian origin. The solar planet is also in the West the ruling factor. The religions of Phoenicia, Canaan, the Aramaeans, Hittites, Nabataeans and North and South Arabs are in the main similar to that of Babylonia, and do not show any advance towards Monotheism. But a pantheistic 'monism', regarding all the powers of nature as the world-pervading spirit, was developed in the Roman period, under the influence of philosophy, Judaism, and Christianity.

The fourth chapter investigates the question concerning the existence of an ancient common Semitic god *ilu* or *ēl*, and the meaning and use of the divine designations *ilu*, *ēl*, *ilāni*, *ēlim*, and *elohim*. The view that there was an ancient Semitic god *ilu-el*, who was the universal deity, the embodiment of divine power, and that polytheism belongs to a later period, is contrary to the real development and to the biblical records. The term *ilu-el* does not define the metaphysical essence of the godhead. It became a divine appellative in a later period. Among the Aramaeans, Phoenicians, and South Arabs, where it occurs alongside of the names of other gods, it was, like *ba'al* and *melek*, a mere appellative, and not a reminiscence of an ancient universal deity. The meaning of it as 'the God' *par excellence* presupposes a monotheistic conception.

The fifth chapter inquires into the meaning of the names *Jahweh*, *Jahweh Šebaot*, *El-Elyon*, and *El-Shaddai*. The introduction of the name of *Jahweh* into the religion of Israel was not an innovation. This name was known before in the pronunciation *Jahu* or *Jahō*. It was changed into *Jahweh* for the purpose of an interpretation which was of special importance for Israel. The name is not Babylonian, as there was no Babylonian god *Jau*. The appellation *Jahweh Šebaot* corresponds to the Babylonian *bēl kishshāti* 'the lord of all humanity'. *El-Elyon* is not the name of an old Canaanite deity. It expresses a religious conception, nearly on a level with the biblical monotheism, of those who were not worshippers of *Jahweh*. *El-*

Shaddai means 'the highest God', and thus is synonymous with *El-Elyon*.

The sixth chapter draws a comparison between the essential features of the Hebrew and Babylonian religions. The national-historical character of the religion of Israel is the basis of the biblical conception of the Godhead. Jahweh is the centre of the union of Israel. He became the national God, because Israel was His creation. This monotheism was not the outcome of philosophical speculations and reflections on His relations to the other gods and to the cosmos. He is transcendental and cannot be represented by images. There may have been images of Jahweh, but they were prohibited by the official religion. There was always an antagonism and a gap between the prophetic Mosaic religion and the popular religious conceptions. Anthropomorphisms and anthropopathisms could not be avoided, as man cannot think of God as person without transferring to Him human attributes. Jahweh being for Israel the only authority, the cause of everything, there is no room for personifications of natural phenomena and for beings which can be won or conquered by magic. Exclusiveness and intolerance are a natural outcome of the divine unity. As the God of the victors, He did not become the head of the Canaanite pantheon, at the conquest of Canaan. He is the God of the people, not of the ruling dynasty. Being the embodiment of justice, the fundament of the Hebrew constitution, the monotheism of Israel is purely ethical. This conception was bound to lead to universalism.

Though we have nothing but praise for the book as a whole, there are some important points which will have to be reconsidered. Concerning the fundamental conceptions of the Babylonian religion, the starting-point is a strict line drawn between that of the Sumerians and that of the Babylonian Semites. The solar cult is of Sumerian origin. It undoubtedly originated among an agricultural people, to whom the solar planet was an absolutely beneficial deity, the centre of life. The fact that most of the chief Babylonian gods bear a solar

character, while the god of storm phenomena plays only a secondary part, evidently shows that the birthplace of the solar cult was Babylonia, the vegetation of which was not dependent upon rain. In any other country, except Egypt, the god of rain is just as important as the sun-god.

To the inhabitants of the Arabian desert, however, the solar planet, though source of vegetation and thus necessary, appears as a terrible deity, and therefore could hardly have become their chief god. The same holds true of the beneficent storm-god. His thunder and lightning inspire them with terror, and they have no way of protection against him. The night is the only time in which they find respite from their sufferings from the heat, and are able to continue their migrations. They see in the lunar planet the ruler of the night. He becomes their protector, and therefore, chief god. Hence, the Semitic nomads must have had a lunar cult. But as soon as they had settled in Babylonia, and had become agriculturists, the sun was bound to become their chief god. The Semitic tribe, to whom the Hammurabi dynasty belonged, was in all probability in a nomadic state, when it entered Babylonia. Four of Hammurabi's predecessors bear names compounded either with Sin 'the moon-god' or with *Sumu*, an equivalent of Sin, because the lunar planet was still the chief god of the immigrants. Hammurabi, however, calls his son *Samsu-iluna* 'the sun is our god'. This great promoter of civilization announced thereby a new era in the religious conceptions of the immigrants and effected the complete amalgamation with the old inhabitants of the country. Hence, if the deities of the West Semites bear a solar character, we may see in this fact Babylonian influence.

Seeing that the lunar planet was the chief god of the Semitic nomads, the meaning of *ilu-el* as 'the God' *par excellence* deserves consideration. The moon being always surrounded by companions, the stars, the idea of plurality suggested itself, and the moon was given a plural designation *elohim*. The Hebrew calendar shows undeniable traces of a former lunar cult, not to mention historical traditions, as the association of Abraham

with Ur and Harran, the chief centres of the moon worship, the name of mount Sinai, undoubtedly connected with the name of the moon-god Sin, and the promulgation of the Decalogue in the third month Sivan which is called 'the month of the god Sin'. It is interesting to notice that the idea of monotheism is more conceivable in a solar than in a lunar religion, as the moon has associates which the sun has not. Hence the Hebrew monotheism is not the result of evolution.

As to the etymology of *ilu-el*, none of the explanations discussed by the author is satisfactory. May we suggest that it was among all Semites a loan-word from the Sumerian *ili* 'to be high'? But we must admit that it is hardly a coincidence that in Babylonian *Ana* means 'the highest god' and *ana* is also the preposition 'to', and that the same is true of Hebrew *el*. The often occurring phrase יֵשׁ (אֵין) לְאֵל יְדִי 'it is (not) in the power of my hand' does not prove that *el* is derived from a root אֵל 'to be powerful', and means 'power'. It is more likely that this phrase is a figure of speech, and literally means 'my hand is to god'. The idea expressed may be either of a close connexion with the god, which suggests power, or of a far-reaching hand from which even a god cannot escape, or of a hand which is superhuman, and rightly belongs to a divine being.

Concerning the etymology of *El-Shaddai*, the present writer agrees with the author that *Shaddai* is connected with Babylonian *shadū*, 'mountain', and means 'the highest God'. But this etymology will not explain the ending *ai* of *Shaddai*. Seeing that the *summus deus* is depicted by the Babylonians as rising between two mountains, which according to Winckler and others, is the highest point, called the *nibiru*, the pass between the two peaks of the Mountain of the World, may we suggest that *Shaddai* is a dual form, and *El-Shaddai* originally meant 'the God of the two Mountains'?

The appellation *Jahweh Šebaot* involves a highly important problem. It is noteworthy that the term *Šebaot*, either in connexion with *Jahweh*, or with *elohim*, or with both, occurs about three hundred times in the Old Testament, and is used by

nearly all the prophets, but it is nowhere found in the Pentateuch, nor in the Books of Joshua and the Judges. The omission of *Jahweh Šebaot* in these books may fairly be taken as a criterion for determining their age. According to the modern critics, a Jewish priest in Babylon wrote the whole history of Israel, beginning with the creation of the world down to the Babylonian captivity. This work is called the Priestly Code. This author was responsible for the literary style of these books. Seeing, however, that the appellation *Jahweh Šebaot* was used hundreds of times by the prophets, and must have been current among the people, shall we believe that the use of this divine designation did not occur to this author until he arrived at the compilation of the Book of Samuel? The author of Deuteronomy did not make use of this designation either. It is, therefore, obvious that the designation *Jahweh Šebaot* came into vogue at the period of Samuel, when we meet with it for the first time. That is generally admitted. But then we must draw the conclusion that the present literary shape of the earlier Books of the Old Testament belongs to an earlier period. The only objection to this conclusion is the remarkable fact that *Jahweh Šebaot* is never used by Ezekiel. This prophet is indeed suspected of having had a hand in the composition of the Pentateuch. The critics will have to maintain that the first seven biblical books were composed by this prophet. The other exilic prophets are just as fond of this designation as their pre-exilic predecessors.

The current opinion is, that *Jahweh Šebaot* means 'the Lord of the hosts of Israel'. Seeing, however, that in the Pentateuch Israel is frequently referred to as 'the hosts of Jahweh', it is strange that it never occurred to Moses or Joshua to speak of God as 'the Lord of the hosts'. On the other hand, we should have expected, at least once, the variation 'the Lord of the hosts of Israel'. We therefore believe in the other explanation that *Šebaot* refers to the heavenly hosts, the stars and planets.

Polytheism rests upon the idea that each deity has a limited sphere of activity. Therefore, one has to be on good terms

with all deities, and none ought to be neglected. In the popular Hebrew conception, Jahweh also was a deity with a limited sphere, and was most likely identified with some planet. Thus the people did not see any reason why they should not sacrifice to other gods as well. The prophets denounced this conception by proclaiming the God of Israel as *Jahweh Šebaot*, 'He who brought the *Šebaot* into existence'. He, therefore, is 'the God of the *Šebaot*', whose sphere is unlimited; for, all natural phenomena being identified with the stars and planets, it follows that the ruler of the heavenly host must possess unlimited power. May we suppose that Ezekiel was careful not to use an expression which implied a gross insult to the Babylonian astral religion?

The Latest Light on Bible Lands, by P. S. P. HANDCOCK, M.A.,
Lecturer of the Palestine Exploration Fund. London:
SOCIETY FOR PROMOTING CHRISTIAN KNOWLEDGE, 1913.
pp. 371 and 103 illustrations.

The author of this volume gained, two years ago, a well-deserved reputation as an able and painstaking scholar by his work *Mesopotamian Archaeology*. His present work, which covers a wide field also, shows a combination of industry and ability. His object is to present a concise account of the excavations made in Babylonia, Assyria, Egypt, Syria, and Palestine, in so far as they throw light upon the Old Testament. This account will enable the reader to form some estimate of the inferences which may be drawn legitimately from them. For the most, the author's endeavour has been to allow the facts to speak for themselves. Only here and there, where it appeared necessary, he criticized theories which appeared to him to rest upon insufficient data.

The book consists of seven chapters and two Appendices. The first chapter surveys the Babylonian civilization and shows the light thrown by the excavations upon the earlier chapters of the Book of Genesis. After this introduction, it turns to the historical period of the Old Testament literature, the time

of Hammurabi. The second and third chapters deal with the Hebrews and the land of Canaan before the time of the Exodus. They contain numerous discussions of interesting problems, as the sites of the store-cities, Pithom and Ramses, the identity of the Pharaoh of the Exodus, the identification of the Ḥabiri with the Hebrews, the condition of Canaan before it was conquered by Israel, &c. The fourth and fifth chapters inform us about the status of Israel in Canaan and in the captivity down to the time of the Maccabees. They give a brief sketch of the Egyptian history from the time of Meneptah down to the overthrow of the nineteenth dynasty to which this king belongs. Starting with Shishak's invasion of Palestine, they describe the relations of Judah and Israel with the Assyrians and Babylonians, and outline the history of the Jews under the Persians, Ptolemies, and Seleucids, which is illustrated by the *Murashu* tablets and the Elephantine papyri. The sixth and seventh chapters give an account of the excavations carried on in Jerusalem, Lachish, Gezer, Jericho, Samaria, Megiddo, &c. The two Appendices deal with the North Semitic inscriptions and the Hittites.

It is a book well worth reading, as it contains a great amount of useful information, not only for the general reader, but also for biblical students. However, we must add that the inferences which the author draws from the records are not always convincing. It looks as if in biblical exegesis he is too much dependent on Driver, who in his later years had become more and more radical.

There are a few points to which the present writer takes exception. The author declines to accept the identification of the Ḥabiri, of the Amarna tablets with 'Ibrim, 'Hebrews', on philological grounds, contending that Hebrew *ayin* is rendered into Babylonian *heth* only when it has a hard sound. He evidently overlooked the fact that the words עֵץ, זֶרַע, בָּעַל, עֶפֶר, עֶזֶר, which etymologically have an *ayin* with a soft sound, are written in the Amarna tablets with *heth* (see Böhl, *Die Sprache der Amarnabriefe*, 6). Besides proper names, as Ḥa-ab-di-ili alongside of Ab-di-ili, Ḥa-am-mu-ra-bi, alongside of Am-mu-ra-bi,

show that West Semitic *ayin* with the soft sound is rendered into Babylonian *heth*.

The author is wrong in believing that the acceptance of the identification of *Habiri* with '*Ibrīm*' would entail the repudiation of vital elements in the Hebrew records. Nothing compels us to identify 'the '*Ibrīm*' of the Amarna tablets with the Israelites in Egypt. If we survey all the passages in which the term '*Ibrīm*' occurs, we find that there must have been other nationalities besides the Israelites which were designated as Hebrews. The very fact that the Israelites are called Hebrews only by the non-Semitic Egyptians and Philistines, but never by any of their Semitic neighbours, seems to indicate that the latter belonged to the Hebrew race as well. If it had not been the case, the Moabite king Mesha would undoubtedly have called his enemies, the Israelites, by the name of '*Ibrīm*'. This term designates all the descendants of '*Eber*'. The author obviously did not consult Böhl's book, *Die Kanaanäer und Hebräer*, Leipzig, 1911, which thoroughly discusses this problem. A close investigation will even show that the term '*Ibrī*' in the laws of slavery (Exod. 21. 2; Deut. 15. 12) originally included all the members of the Hebrew race, and did not refer to the Israelites only.

The author's opinion that there is no objection to the identification of *Habiri* with Hebron is unfounded. The root *הבר*, from which the name Hebron is derived, is rendered in the Amarna tablets into *ibru* (Knudtzon's edition, 126, 16).

Manetho's story about the expulsion of the Hyksos need not be discredited, but it does not follow therefrom that the Israelites had been expelled at the same time. The latter undoubtedly came to Egypt during the rule of the Hyksos. This fact of course explains the high position of Joseph in this country. Being relations of the expelled ruling tribe, the Israelites naturally were suspected of being disloyal to the new dynasty and were treated as enemies. Their oppression must have taken place under a régime which immediately succeeded that of the Hyksos, thus under the eighteenth dynasty. There is no good reason to assume that they were oppressed two hundred and fifty years

later, under Ramses II. The Israelites never had a better opportunity to leave Egypt than at the death of Amenophis IV, the last king of the eighteenth dynasty, 1350 B.C., when Egypt was torn by civil strife, caused by the religious reforms of this king, and its prestige was very low abroad. Böhl (*l.c.*, p. 92) had already rightly contended that we have no reason to doubt Jephthah's date of three hundred years from his time to that of the Exodus (Judges 11. 26). Now seeing that in Jephthah's time Israel was oppressed by the Philistines and the Ammonites (*ibid.* 10. 7), and that Saul had to contend with the same enemies, we may reasonably conclude that the period of Saul and Samuel immediately followed that of Jephthah. Assigning forty years to the former and forty to David, the accession of Solomon took place 380 years after the Exodus, 970 B.C., a date which is historically undeniable. The error in the date of four hundred and eighty years given in 1 Kings 6. 1 could be easily explained by the assumption that the digits were expressed by perpendicular strokes, as in other Semitic inscriptions, and the transcriber read 'four', instead of 'three'.

The author mentions the opinions of Alfred Jeremias and Professor Naville that the Decalogue or the Mosaic Books were originally written in cuneiform characters. These opinions would have some justification if there were reason to doubt the existence of the Phoenician characters in Moses' time. The author, however, has called attention to the existence of a Phoenician inscription of the fifteenth century B.C. (p. 280). We thus see that the Phoenician characters were known before the time of Moses.

The Bible and the Spade. EDGAR J. BANKS, Ph.D., Field Director of the recent Babylonian Expedition of University of Chicago. New York: ASSOCIATION PRESS, 1913. pp. 193 and 19 illustrations.

This work was written for the general reader who has neither time nor patience to read the accounts of Oriental discoveries

by specialists. Each of the chapters, except the first which briefly outlines the history of the excavations, is headed by a biblical verse as a motto which is illustrated by the results of the discoveries. It contains forty-seven short chapters. Its purpose is to impress the reader that the biblical stories are not of a legendary character, but real history. It is a readable book, and many a reader will feel indebted to the author for the pleasant and useful time spent in its perusal. Books of this kind deserve recommendation. The work of destruction in biblical exegesis has been going on for a long time. In consequence, scepticism regarding the truth of the biblical narratives spreads among all classes of the people. Therefore, the knowledge that the Bible contains many facts which find confirmation in Babylonian and Egyptian records will check their hasty judgement and inspire them with more reverence for the Scriptures.

We notice that the author in saying: 'even as late as the year 70 A.D., during the revolt of Bar-Cochbar' (p. 166) evidently mixed up two historical events. The revolt of Bar-Cochba (not Cochbar) occurred 130 C.E., about sixty years after the destruction of Jerusalem.

The Philistines : their History and Civilization. By R. A. STEWARD MACALISTER, M.A., F.S.A., Professor of Celtic Archaeology, University College, Dublin. The Schweich Lectures, 1911. London: published for the British Academy by HUMPHREY MILFORD, Oxford University Press, Amen Corner, London, E.C., 1913. pp. 136 and 11 illustrations.

Many theories about the origin of the Philistines have been put forward by modern scholars. Some, like Stade, Tiele, and Schwally, assigned to them a Semitic origin. The prevailing opinion, however, is that they were non-Semites. As far as the biblical records are concerned, the evidence is in the favour of the latter view. The Philistines played a prominent part in the early history of the Israelites, and were their inveterate enemies. Yet in the stories of the patriarchs, we find them in intercourse, alliance,

and covenant with Abraham and Isaac. The enmity to their descendants can be explained only by the assumption that the inhabitants of the country subsequently called Philistaea, were supplanted by other tribes. The latter adopted in the course of time the Canaanite language, yet still continued in their hostile attitude to the Semites whom they had subjugated. Biblical tradition has recognized them as immigrants from Caphtor (Amos 9. 7). The fact that the struggles with the Philistines began in the times of Jephthah and Samson, according to the biblical records, apparently indicates that the former inhabitants of these territories had been on friendly terms with the Israelites. The non-circumcision of the Philistines strongly favours the theory of their non-Semitic origin.

The author of the present work who in the years 1899-1900 discovered several Philistine localities, and in 1902-1905 and 1907 excavated Gezer, is no doubt a reliable authority on Palestinian archaeology. In the present volume, full of information old and new and highly suggestive, he attempts to collect in a convenient form the data about the Philistines. But we regret to say that he is not unbiased. It looks as if this book were especially written for the purpose of vindicating the honour of the *Aryan* Philistines whose name in modern times has become a technical term for a person impervious to a higher influence of art and civilization. He maintains that they have been grievously wronged, as the Philistines were the real carriers of art and civilization in Palestine. He is even inclined to give them credit for the invention of the alphabet.

The book consists of four chapters which deal with the origin, history, land, and civilization of the Philistines. On the basis of the Hebrew and Egyptian records and a comparison of the Minoan civilizations, he arrives at the conclusion that the Philistines were a people composed of several clans, derived from Crete and the south-west corner of Asia Minor. From a papyrus containing the personal report of the adventures of an Egyptian messenger to the Lebanon, he proves that the domain of the Philistines was more extensive than the scanty strip of land

allowed to them in biblical maps. But this conclusion rests on the assumption that the *Zakkala* mentioned in the papyrus formed one of the Philistine clans and were identical with the *Kasluḫīm* (Gen. 10. 14), which is rather precarious. His suggestion that Sisera was a Philistine deserves consideration. In his description of the Philistine cities, he especially deals with Ekron, the site of which is wrongly identified with the present village Akir, demonstrating by the route of the wanderings of the Ark that it is identical with the present village Dhikerin, though etymologically there can be no direct connexion between these two names. Highly interesting, though in a great many points unconvincing, is the fourth chapter, in which the author investigates the language, organization, religion, and the place of the Philistines in history and civilization.

Ancient Babylonia. By C. H. W. JOHNS, Litt.D., Master of St. Catharine College, Cambridge. (*The Cambridge Manuals of Science and Literature.*) Cambridge: at the UNIVERSITY PRESS, 1913. pp. 148. 8 illustrations and 1 map.

The author's book *Ancient Assyria*, published in the Cambridge Manuals, has now been followed by a companion volume which succinctly outlines the history of Ancient Babylonia. Coming from the pen of this great scholar, there is no need to say that it is, like the former, a reliable work. Considering the historical sources which from the Hammurabi period down to the second half of the eighth century are very scanty, and the limited space allotted to these Manuals, the author has done the best possible to acquaint the reader with the general character of Babylonian history. Still in such a work it is inevitable that there should not be some slight details capable of improvement or correction.

In the present, it is nigh impossible to give the exact dates of the Babylonian rulers. But one would expect, at least, approximate dates. It could be done in cases where Babylonian kings were contemporaries of those of Assyria whose dates are known. The reader has not always the time nor the opportunity to look up the dates in the Manual of the Assyrian history.

It is surprising to find that *An-ni Kishki*, in the Dates of Sumu-abu and Sumu-la-ilu is rendered by the author: 'the god Jau of Kish.' Now there is no doubt that it cannot be translated 'Anu of Kish'. The Date lists are written in classic Sumerian, and in that case we should expect the casus obliquus *An-na*, instead of the casus rectus *An-ni*. To read *Ana-ni*, as does Schorr (*Altbabyl. Rechtsurk.*, p. 583), is impossible. Linguistically, there is no objection against the rendering of NI by Jau (cf. S^a, col. I, 19). But in that case we would have to assume that the worship of Jau (= Jahweh) existed in Babylonia already in the third millennium B.C. This opinion was indeed held by scholars, but it was based upon the belief that the god *Ja-pi-um* (= *Ja-rwi-um*) is mentioned in the oath formulae on tablets from Kish, in the reigns of Rim-Anum and Sumu-abu. Now, however, it is well known that *Ja-pi-um* is not the name of a god, but of a king who was a contemporary of Samu-abu and Rim-Anum (see p. 64). If NI is to be read Jau, we could assume that the name *Ja-pi-um* is a hypocoristicon of a name compounded with Jau. Seeing, however, that NI is also to be read *iñi* = NI NI (S^a, col. I, 20), and there are weighty reasons to believe in the existence of an ancient West Semitic god *El*, the reading *Ili* = *El*, in the Dates, may also be considered.

Handbuch der altorientalischen Geisteskultur. Von Lic. Dr. ALFRED JEREMIAS, Pfarrer der Lutherkirche, Privatdozent an der Universität zu Leipzig. Mit 215 Bildern nach den Monumenten und zwei Sternkarten. Leipzig: J. C. HINRICHS'SCHE BUCHHANDLUNG, 1913. pp. 366.

This work is a most interesting contribution to the history of religion. This praise will be willingly bestowed upon it even by those who deny that Babylonia played such an important part in the development of religious thought. The less we are inclined to agree with the so-called Pan-Babylonian, the more we must admire the ingenuity of the scholars, especially of the late Hugo Winckler, who were able to erect such a splendid

edifice upon a fictitious ground. It offers also a useful lesson, which in our iconoclastic age is not out of season, in demonstrating that not all ingenious systems must needs be true. However, as to its validity, let us not judge hastily. It must be borne in mind that this system has aroused the most violent opposition among those who are believers in higher criticism. Pan-Babylonian is a natural enemy of the latter, though it is also opposed by the conservatives. Those who look with consternation at the havoc wrought in the mind of modern theologians by higher criticism must feel indebted to the originators of a theory by which a destructive system is challenged.

The Pan-Babylonians maintain that the whole civilization of the Euphrates valley points to the existence of a scientific and at the same time religious system founded upon an astronomical theory. From there it spread over the whole world and developed into many forms. For, the conception of the universe, as we find it expressed in all parts of the world, entirely precludes the possibility of an independent origin in different places, by the exact repetition which only transmission by a migration can satisfactorily explain. A natural deduction from this theory must be that Israel which ethnically and geographically stood near to the Babylonians must have possessed in the beginnings of its history a high grade of civilization, and could not have been a people with peasant religious conceptions. A theory of this kind cannot be agreeable to the higher critics whose pet theories are not a whit less fictitious than the Pan-Babylonism they oppose.

The most serious objection to the fundamental principle of this theory is that made by the astronomer Kugler, who contended that Babylonian astronomy does not date from an earlier period than the eighth century. However, the author of this volume has with many proofs ably demonstrated that Kugler is wrong on this point (see pp. 130-6).

Kugler, however, has made another objection to this theory which, as the author admits, is absolutely incontrovertible. It concerns the theory of the Ages which has the most important

bearing upon the Babylonian religious development in the Pan-Babylonian system and the biblical interpretation. It has been asserted that in the most remote period the vernal equinox was in the Zodiacal sign of Gemini 'the Twins', Sin and Nergal, i. e. moon and sun, in which the former took the foremost place. Therefore an Age of Gemini must have been an age of the moon-god. From about three thousand onward, the actual position of the vernal equinox was in the Taurus 'Bull', and the calendar was consequently behindhand, its reform having been carried out by Sargon of Akkad. The advancement of the vernal point was used by Hammurabi to glorify his own reign as the beginning of a new epoch. This new Age of Taurus bears a solar character. Marduk who was exalted by Hammurabi to the position of the chief of the gods is essentially the sun-god. In the eighth century, the vernal equinox retrograded into the sign of Aries 'Ram', and the calendar was again reformed by Nabū-naṣir. Upon the theory of the Ages is based the assumption that Oriental stories endow the bringer of a new era with the motifs of the astral figure who represents the beginning of a new Age.

Kugler, however, has proved that the Age of Gemini passed about 1,500 years before Sargon; thus his birth was not coincident with the new position of the vernal equinox. The Age of Taurus ended before Hammurabi; thus the elevation of Marduk has no connexion with this Age. The Age of Aries lasted till about the Christian era.

The present writer in his review of the author's work *The Old Testament in the Light of the Ancient East*, 1911, in this periodical (New Series, III, p. 579), found a great difficulty in reconciling the theory of the Ages with the biblical calendar. Seeing that in the Age of Taurus the year began with Iyar, the question presented itself: The Exodus having taken place in this Age, how could Nisan have been fixed as the beginning of the year? We see now that the biblical records are correct, as usual. The Exodus took place in the Age of Aries, in which Nisan was the beginning of the year.

The author is indeed compelled to admit that the division

of the time into Ages was based upon a wrong calculation, but still maintains its theoretical existence which served for a mythological application. This contention does not seem to be convincing. In the opinion of the present writer, however, the existence of such a theoretical system is not impossible. Jeroboam who introduced the worship of the Bull into Israel transferred the Feast of Tabernacles into the eighth month 'which he had devised of his own heart'. He evidently, without considering the actual position of the equinox, fixed Iyar as the first month, in accordance with the Age of Taurus 'the Bull', the worship of which he had introduced. The same may have been done by Hammurabi.

The author was evidently aware of the fact that by the downfall of the theory of the Ages, the application of the Ancient Oriental Teaching to the biblical literature was bound to encounter insurmountable difficulties. He therefore, for the present, left the Bible alone and confined himself to the exposition of the Babylonian religious system.

Another difficulty is to be found in the idea of a pre-established harmony between a celestial and a terrestrial image. It is admitted that in practice it is things terrestrial which are reflected in the heavens, but in theory it is the other way: the type is in the heavens. Then, how can the Pan-Babylonians assert that the whole organization of the Babylonian state was based upon an astronomical system? The political organization of the Babylonians must have been complete in all details before the astronomical system was developed, since the celestial world was a mirror of Babylonia.

But whatever objections we may have to some details, there is no justification for condemning the Babylonian theory altogether. Even if it is in many essential points open to criticism, the value of this work is not impaired thereby. It will always remain an exceedingly useful book of reference for the interpretation of religious texts. It contains a vast amount of learning, and is highly suggestive on every page.

Babylonian Liturgies. Sumerian Texts from the early period and from the Library of Ashurbanipal. For the most part transliterated and translated, with introduction and index, by STEPHEN LANGDON, Shillito Reader of Assyriology, Oxford. With 75 plates. Paris: LIBRAIRIE PAUL GEUTHNER, 1913. pp. LII + 151.

There is no need to dwell upon the importance of Babylonian liturgies for the history of the Babylonian religion. Where else can we expect to find the religious conceptions of the Babylonians more clearly expressed than in their prayer books? Of more general interest is the bearing they have upon biblical research. It is hardly to be doubted that a close relationship exists between the Hebrew Psalms and the Babylonian liturgies, though this semblance is limited to the poetical form of both, and not to their contents; for the world of religious thought and feeling in Israel is incomparably deeper than that of Babylon. Now bearing in mind the high antiquity of the Babylonian liturgies, as most of them date from a remote period, the late dates generally assigned to the Hebrew Psalms are unwarranted. An early Babylonian influence upon the Hebrew religious conceptions cannot be denied. Hence, it would have been strange, if the Hebrews in a very early period of their history had not possessed liturgies similar to those of the Babylonians. Moreover, we may reasonably assume that the earliest literature of a primitive people consists of liturgies which were chanted during the sacrifices, in the honour of the deity. Those of the Hebrews may have undergone certain modifications to fit in with the conditions and the religious conceptions of the people. But on the whole, they may date back to a very early period. These problems can be solved only by a close comparison of the Babylonian liturgies with the Hebrew Psalms. In recent years, the material of this branch of literature at our disposal has been greatly increased by the publications of Zimmern, Thureau-Dangin, Scheil, and Radau. We now possess liturgies even from the time of the classical Sumerian period.

The name of the author of the present volume needs no

introduction to the scholarly world, and his works no recommendation. He is well known both as Assyriologist and expert in Sumerology of high repute, by his works, *Sumerian and Babylonian Psalms* (Paris, 1909), *A Sumerian Grammar* (Paris, 1911), and numerous other valuable contributions to Assyriology. The texts published in this volume consist of 209 numbers. They are for the most part small fragments of Sumerian liturgies copied for the Library of Ashurbanipal. None of the originals in their final form antedate the Cassite period. Not a few are duplicates of texts published before. There are several the contents of which are doubtful. The value of many would be insignificant but for the notes of the author, in which he shows that they are lost portions of already published liturgies. The introduction is a highly meritorious piece of work. It gives a preliminary history of Babylonian public worship. From the technical name for the psalmist in the pre-Sargonic period, the author infers that liturgical services originated among the Sumerians. He describes at length the names and the offices of the various kinds of psalmists and musicians who officiated at the services, the musical instruments used thereby, the technical liturgical terms, the character of the liturgies, the origin of longer litanies, the strophical arrangement and the metrical measures. We learn that the guilds of the psalmists became in a later age a kind of college which studied and edited the official liturgical literature. Interesting is the description of the ritual by which a bull, the symbol of the lyre, was consecrated to preside over this college, and a tambourine was dedicated. The texts containing the incantations used in these rituals are transliterated and translated. The index is a useful contribution to the history of Babylonian culture and religion. We should call it a glossary. It gives the names of the deities, temples, and their titles. The latter are for the most part translated. It contains a great many longer notes, in which the subjects under consideration are discussed.

The author also gives a transliteration and translation of a text published by Hugo Radau, *BE.*, XXIX, Nos. 2-3, which are variants. No. 2 is the original and came from the ancient

Sumerian Library of Nippur, while No. 3 is a neo-Babylonian copy with an interlinear Semitic translation, published by Georg Reisner, *Sumerisch-Babylonische Hymnen*, No. 71. Radau, who discovered the variant text of Reisner, has transliterated and translated both the original and its variant in his work cited above, pp. 63-74. Now it may interest some readers to know that in some portions of the text, where the Semitic translation is missing, there is not the least resemblance between the translations of Radau and of our author. Both are recognized as authorities on Sumerology, and yet one or both of them must be wide of the mark. Let us compare the following passages:

RADAU.

(2) When ravaging enemies
as if with darkness the land
with desolation (destruction)
had filled.

(3) When the gods of the
country into captivity they had
led.

(8) A haven of safety no-
body finds.

(10) The rivulets (canals)
make precious (to rise), the
innocent into the dust, oh do
not cast!

LANGDON.

(2) Cool waters causing
abundance, which as the
morning light are brought into
a barren land.

(3) Which the gods of the
land caused to flow.

(8) The cities mourn (?)
and men plant no more.

(10) The little canals where
men perform hand-washings,
give life to the soil no more.

The present writer, however, believes that our author's translation is more probable. These translations are characteristic of the present state of Sumerology, and teach us to receive with scepticism sensational announcements of newly discovered creation and deluge stories, written in Sumerian, which are claimed to be more in agreement with the biblical versions than the Semitic Babylonian stories. The translations are liable to be wrong altogether, if there are no Semitic translations to control the Sumerian text.

Vorderasiatische Schriftdenkmäler der Königlichen Museen zu Berlin. Herausgegeben von der Vorderasiatischen Abteilung. Heft II u. X. *Sumerische Kultlieder aus altbabylonischer Zeit.* Von HEINRICH ZIMMERN. Erste Reihe. Mit 8 Lichtdrucktafeln. Zweite Reihe. Mit 2 Lichtdrucktafeln. Leipzig: J. C. HINRICHS'SCHE BUCHHANDLUNG, 1912. pp. 64. 1913. pp. 56.

The texts published in the present volumes consist of hymns to various deities, prayers, incantations, &c. They are written in Sumerian and belong to an old Babylonian period. Texts of this kind are of high importance for our knowledge of the Babylonian religion, in demonstrating that the bilingual hymns and incantations of the Library of Ashurbanipal, of the neo-Babylonian and the Persian-Greek periods are not products of a late age, but present, as far as the Sumerian part is concerned, exact copies of the ancient Sumerian texts, with the exception of some slight deviations, a few additions and transformations. The texts of the Berlin Museum came from North Babylonia, Babylon, and Sippar, and are not of the same age as those excavated in South Babylonia, at Nippur and Telloh. The latter may claim a higher antiquity; their lowest date may be under the dynasty of Isin; while the former belong to the time of Hammurabi or of his immediate predecessor or successor.

The 216 numbers of religious texts contained in the present volumes are, as far as their external form is concerned, not of the same quality. There are tablets with several columns and large dimensions which, even in the choice and shaping of the clay, and especially in the script, frequently very minute, impress one that great care was bestowed upon their execution. They frequently contain a whole series of hymns, and were evidently manufactured for the temple libraries, where they were preserved as norms for later ages. But there are others of small size, with one column, of inferior and not carefully prepared clay and coarse large script. These latter evidently were of ephemeral character, being either school copies or votive offerings to some gods.

A great help to the study of these texts is the catalogue of the editor, Professor Zimmern. It describes the form of each tablet, gives the beginning of each hymn, in order to know to what series it belongs, and informs us of the parallels and duplicates in other publications. For the present, the parallels to the bilingual texts are of special interest. The contents of the other texts will hardly be an object of study to the great majority of the Assyriologists who are not experts in Sumerology. The editor, however, announces in the introduction his intention to publish in a number of the *Leipziger Semitistische Studien* a complete transliteration, with numerous restorations from parallels and duplicates, and, as far as possible, a translation of these texts. We hope that this work will soon make its appearance.

Grundzüge der Sumerischen Grammatik. Von FRIEDRICH DELITZSCH. Leipzig: J. C. HINRICHS'SCHE BUCHHANDLUNG, 1914. pp. 158.

Kleine Sumerische Sprachlehre für Nichtassyriologen. Grammatik, Vokabular, Textproben. Von FRIEDRICH DELITZSCH. Leipzig: J. C. HINRICHS'SCHE BUCHHANDLUNG, 1914. pp. 142.

The influence of Sumerian in Babylonian-Assyrian culture has been in recent years almost universally recognized. Some knowledge of this language is indispensable to a thorough understanding of Babylonian grammar as well as of Babylonian religion, law, and literature. Students of Assyriology have been for a long time looking forward to a reliable guide leading them into the bewildering labyrinth of this singular language. Though its structure is now established upon a scientific basis, a succinct grammar which should put the results within easy reach of the students was still wanting. Stephen Langdon's work, published a few years ago (*A Sumerian Grammar and Chrestomathy*, Paris, 1911), is too technical to serve as a book of reference. Nevertheless, it will be of inestimable service to one who is desirous of making himself acquainted with all the problems of Sumerology, and has patience enough to study this book thoroughly.

In works of Friedrich Delitzsch, who, by his grammatical and lexicographical works, did more than any other scholar for the spread of Assyriology, we expect to find both utility and soundness. In respect to the former point, the present works fully come up to our expectations. Concerning the latter, there are still many points which partly cannot be regarded as final, and partly remain unsolved problems. However, the fault does not lie with the author, but with the present state of Sumerology, which has not yet quite outgrown its infancy. The author frankly admits that there still remains plenty of room for improvement and correction, and indicated it by the title of the first volume, *Fundamental Features of Sumerian Grammar*. Seeing, however, that the second volume, though primarily intended for the general linguist, clearly and briefly outlines the grammatical rules, it is to be regretted that the first volume which is intended for Assyriologists is not more extensive. From what we read we gain the impression that the author on many points has a great deal to say, and restricted himself to a mere hint for the sake of brevity. However, for this drawback the author is not to blame either. From the preface to the second volume we learn that the publication of this work was an afterthought.

In the first volume the grammar is preceded by a list of sources of the Sumerian literature from which the examples quoted are taken. This list itself is a useful help to the study of Sumerian. Many a student will feel indebted to the author for informing him where to look for Sumerian, bilingual, and *eme-sal* texts. The introduction discusses the bilingual inscriptions. The views expressed are well known and generally admitted. Owing to the difference in the mode of speech between the Sumerians and the Semites, the Semitic translations are not always reliable. From the many mistakes we learn that, as a rule, the Semitic priests did not possess a thorough knowledge of the Sumerian language. Even the Sumerian-Akkadian vocabularies should not be implicitly relied upon, as they contain a great many Semiticisms.

A special feature of this grammar is the sharp distinction drawn between the *eme-ku* and *eme-sal* forms. This distinction would be necessary, if the author did share the current opinion that *eme-sal* represents decayed Sumerian forms. But he rightly contends that *eme-sal* is just as ancient as the so-called classical forms of *eme-ku*. The bewildering number of the personal prefixes are classified and illustrated by many examples, 'without suggesting any explanation for this singular phenomenon. The solution of this puzzle remains an important task for future research. The contention that *mu*, *ma*, as prefixes for the first person singular, are identical with the pronouns *ma*, *mu* for the first person singular, is unconvincing, since the same prefixes are used for the third person as well. We would rather see in all the prefixes *eme*, *ema*, *mu*, *ma*, *mi*, *mun*, *man*, *mib*, *im*, *um*, *am* derivations from the root *me* 'to be'. The nasal pronunciation of *m* may have brought forth the prefixes *ne*, *ni*, *in*, *an*, *nen*, *neb*. On the other hand, an interchange of the labials *m* and *b* may have developed the prefixes *ba*, *bi*, *ban*, *bab*, *ib*, *ab*, *ub*. The prefix *al* may have been caused by an interchange of the liquids. However, the existence of special prefixes *nen*, *neb*, *ban*, *bab*, *mun*, *man*, *mib* is not beyond doubt. The final *n* and *b* in these forms may stand for the infixes *ni* and *bi*, indicating the object, which in Semitic often remain untranslated.

The second volume is a model grammar. The contents and the arrangement are on the whole the same as in the former. The results are presented in a lucid and brief way, without being encumbered by discussions which require a knowledge of cuneiform. Each paragraph is illustrated by a few examples, with omission of the sources. The few selections from Sumerian literature have an interlinear literal translation, with notes referring to the paragraphs under consideration. It also contains a glossary.

The author's assertion, in the preface to the first volume, that the results presented in his grammar are based upon his own investigations, without having been influenced by opinions of other scholars, strikes one as singular. We do not doubt his

assertion, though we cannot understand how he knows of the achievements of Thureau-Dangin, to whom, as pioneer of Sumerological research, the present first volume is dedicated. As a matter of fact, there is not the least reference to any scholar in the whole book. Langdon's grammar is of course ignored. It is a new departure in scientific research. It was customary to credit scholars with the results of their studies, even if the author subsequently arrived at the identical results.

Die Namen der Körperteile im Assyrisch-Babylonischen. Eine lexikalisch-etymologische Studie. Von HARRI HOLMA. Leipzig: OTTO HARRASSOWITZ, 1911. pp. xix + 183.

The present volume is one of the most valuable contributions to Semitic philology made in the last decade. Its author, a Helsingfors scholar, investigates the names of the parts of the body in the Babylonian-Assyrian literature. He compares them with those in all other Semitic languages and frequently also with those in Egyptian, Coptic, and other idioms. The literature in which these names occur, their ideograms and the various views concerning their meanings, are thoroughly discussed. The introduction is highly suggestive. The bibliography and the indices are useful. A special feature of this work is a German-Assyrian glossary. Thus it is in every respect a splendid lexical-etymological study, and it will take an honourable place among the prominent works on comparative philology.

However, this subject is not only of importance philologically. It is also in other respects of great interest. In the first place, it touches a problem of ethnology. We find that the names of the head, eye, nose, mouth, lip, ear, heart, &c., are in all Semitic languages identical. Therefore, it is evident that these names date from a prehistoric time when the Semites still formed a united ethnological group. Seeing that many of them are identical with those of Egypt, we may conclude that they had already existed when the Egyptians separated themselves from the common home of the Semites and Hamites, and migrated to the West.

It further involves a problem of anthropology, the acquisition of speech by primitive man. In his first reflections on his relation to nature, his own body was the nearest field of experiment. The functions of the members of his own body were the first actions which attracted his attention. They must have been known to him in the earliest state of his development. Hence, in Semitic, as in all other languages, they represent the oldest stock of human speech. The oldest linear measures are designated by all nations by members of the human body. Seeing in all things of nature reflections of his own being, primitive man designated inanimate objects by the names of parts of his own body, as, for instance, *pi abulli* 'the mouth of the gate', *rīsh nārī* 'the head of the river', *lišān girri* 'the tongue of the fire', *appu īṣi* 'the nose of the tree', &c. Similar traces of anthropomorphisms are found in all languages. The primitive origin of these names is best seen in a great number of prepositions which originally were names of the parts of human body, in construct state, as *muḥ* 'upon' (crown of the head), *kiriḇ* 'in' (the intestines), &c., &c. It is a peculiarity of the Semites to express abstract ideas by concrete things.

From an anthropological point of view it is interesting to notice that the Semites did not distinguish between the upper and lower, front and back extremities. They did not coin special names for the fingers and the toes. The same is true of other languages. They date from a time when man did not distinguish between biped and quadruped beings. The distinction between the names of the members of the human body and those of animals belongs, as was recognized long ago, to a later period.

From the names of the various parts of the body we may infer that the Babylonians, previously to the time of the cuneiform records, that is, in a prehistoric age, had a relatively good knowledge of anatomy. The same must be true of the other Semites. It will explain the fact, in the opinion of the present writer, that the Rabbis possessed an exact knowledge of animal anatomy, as especially seen in the Tractate *Hulin*. This problem

naturally involves the question concerning the age of Babylonian medicine.

Seeing that the names of the parts of the body had their origin in a primitive age, we find an explanation for the singular fact that many of them, which must have attracted the first attention of primitive man, are biliteral, as *pū* 'mouth', *idu* 'hand', *damu* 'blood', &c. They belong to a time when the Semitic tri-radicalism had not yet been developed. It is also noteworthy that none of the primitive names are formed with prefixes. The suffix *ānu* in *lišānu* 'tongue', and *girānu* 'throat', &c., was added in a later age.

Babylonian Records in the Library of J. Pierpont Morgan,
Parts I, II.

Babylonian Business Transactions of the first millennium B.C.

By ALBERT T. CLAY, Ph.D., William M. Laffan Professor
of Assyriology and Babylonian Literature, Yale University.
New York, MCMXII. pp. 49, plates of autographed texts 50,
heliotype reproductions IV.

Legal Documents from Erech, dated in the Seleucid Era (312-65
B.C.), by ALBERT T. CLAY, Ph.D., LL.D., William M. Laffan
Professor of Assyriology and Babylonian Literature, Yale
University. New York, MCMXIII. pp. 89, plates of autograph
reproductions 50, heliotype reproductions VII.

Professor Clay, who for many years has been engaged in augmenting the material of cuneiform inscriptions at our disposal by publishing several highly valuable volumes of business and legal documents from the Cassite and neo-Babylonian periods in the Museum of the University of Pennsylvania, has again placed scholars under obligation by making accessible a large number of Babylonian records of the Morgan Library Collection. The documents published in the present volumes cover a period of six hundred years (743-139), at least, with the exception of the first two numbers in the first volume which the author for

palaeographic considerations rightly assigns to Nabuchadnezzar I (about 1150 B.C.). The following two numbers are dated in the tenth and thirteenth year of Nabū-shum-ishkun. Historians generally assign to this king, the predecessor of Nabū-naṣir, a reign of six years (753-748). The author, therefore, contends that the number of years which this king reigned must be increased at least to thirteen. This date is now indeed given by Johns (*Ancient Babylonia*, 1913, p. 114). Seeing, however, that palaeographically these texts may just as well belong to the tenth century, as there is no great difference between them and those of Nabuchadnezzar I, it is possible to assign them to the reign of Nabū-shum-ishkun I, who was a contemporary of the Assyrian kings Adad-nirāri III and Tukulti-Ninib II (911-885).

The first volume consists of an introduction, an index of proper names, a catalogue, and 102 documents. The latter are for the most part personal contracts: land titles, rental of houses, sales of slaves, promissory notes, mortgages, assignments of obligations and agreements on oath to perform certain duties. The first 28, as well as other texts, belong to the class known as 'Temple Administrative Archives'. These contain principally payments to individuals in the Temple service, or are receipts for expenditures made in the interests of the Temple.

From the names of the places which are mentioned in the documents we learn their provenance. Twenty came from Babylon, twelve from Borsippa, ten from Dilbat, three from Sippar, two from Nippur, one from Cutha, and one from Erech. Several others came from less known localities. Nos. 2-28 do not contain any reference to the place where they were written. But they are said to have been found at Senkereh, the ancient Larsa, in South Babylonia.

The chief value of the texts from the early period is of a palaeographic character, because they are the first published documents of the age they represent. The oldest Babylonian document from this period, hitherto known, dates from the reign of Shalmaneser V. They are valuable also on account of the foreign names contained in them, many of which are West

Semitic. We notice that in No. 26, 7, the name *Shamash-la-sha-da'* is to be read *Shamash-ia-da'*. The other West Semitic name *Man-nu-ia-da'* (*ibid.*, 8, 14) is omitted in the index.

The author is evidently right in identifying Nabū-mukin-zēr, of No. 22, with the name of the king Ukin-zer, in the Babylonian King List A. This identification has already been made by Rogers (*Cuneiform Parallels*, Chronological Table). But Rogers does not seem to have known of this text, as it is dated in the fourth year of this king's reign, and he nevertheless, in accordance with the King List, assigns to Nabū-mukin-zēr a reign of three years. Johns (*l.c.*, p. 114) does not accept this identification, and thinks it probable that this king was the predecessor of Nabū-shum-ishkun II, a suggestion which the author also considers possible, though hardly probable.

Nos. 23-8 are dated by the years of the king's reign without containing the king's name. Are there palaeographic considerations which determined the author to place them after Nabū-mukin-zēr? The date of No. 23 seems remarkable. It contains after *shattu 4 (kam) sha sharri*, MU (hardly ZIR) NU TUK U. Is it to be read *shuma lā ishu(u)*, and does it mean 'in the fourth year of the king who has no name'? The author assigns, with a question-mark, No. 87 to Darius II, the successor of Artaxerxes I. But it is quite impossible, as this tablet is dated in the twenty-ninth year of Darius (cf. line 4) and Darius II reigned only twenty-one years (424-404). Besides, the title 'king of Babylon' was never borne by Xerxes' successors.

The author calls special attention to No. 98, which is dated at Erech, 190 B.C. It contains no less than fifteen names compounded with Anu, indicating that the worship of this deity seems to have predominated in this city to the very latest period. This phenomenon, however, is not altogether surprising, as we already know of a contract of the reign of Seleucus II, dated at Erech, which contains sixteen names compounded with Anu (see *K.B.*, IV, p. 313 ff.), and since it was customary in that period to name the child after his grandfather, the same names were bound to reappear again and again. What we find more remarkable is

the fact that the name of Anu is, without exception, written with the sign for the number sixty. This writing is never found in historical and religious inscriptions, and occurs only twice in proper names, in the reign of Cyrus, dated at Erech (see *ibid.*, p. 268), and in that of Darius (see Tallqvist (*Babyl. Namenbuch*). The representation of Anu by the number sixty designates him as the highest God. The documents of the second volume contain sixty-nine names compounded with Anu, borne by more than seven hundred persons, and in all of them Anu is invariably written with the same sign. This large number can hardly find its explanation in the fact that Anu was the chief god of this city. We do not proportionally find so many names compounded with Shamash in Sippar or with Marduk in Babylon. Only the future can tell whether Anu was so conspicuous in proper names in the pre-Seleucid periods. If it should be found that it was not the case, we would be compelled to assume that the worship of Anu came into prominence in the Seleucid era. The highest Babylonian god Anu was in all probability, as we shall farther see, identified with the highest Greek god Zeus, whose cult may have predominated under the Seleucids. The remarkable fact that we do not find the well-known temple *E-an-na* in these texts, but instead we meet with the names *Esh-gal* and *Bit-rish* 'the temple of the chief' (?), indicates a certain change or reform in the religious institutions of Erech.

The second volume contains an introduction, indices of proper names, a catalogue, and fifty-six contracts with nine transliterations and translations of selected texts. The documents, with only a few exceptions, are identified with the Temple or Temple property and income. The stipulation that it is Temple property, in the assignments of rights and transfers, indicates that the documents belonged to the Temple archives. Nineteen of these documents refer to the assignments of rights to receive the offerings made to temples or shrines at Erech. The fact that these documents belonged to the Temple archives explains, in the writer's opinion, the complete absence of Hebrew names, though there undoubtedly existed a great Jewish community in Erech, as in all Babylonian cities.

The pious Babylonian Jews had of course not the least connexion with the temples.

The Greek names in these documents are philologically and historically of high importance. They seemingly show that there were a number of Greeks at Erech. In a few instances, however, we find that these 'Greeks' were of Babylonian extraction; for example, *An-ti'-i-ku-su* (Antiochus) was grandson of *Anu-balāt-su-iḫbi*; *Di-i-pa-ni'* (Diophanes) was grandson of *Kidin-Anu*; *Ni-ik-ar-qu-su* (Nikarchos) was son of *Aḫutu*, &c. In a few cases we find that Babylonians assumed a second Greek name. If we may judge from a few instances, it seems that the assumed Greek names were not taken at random, but corresponded more or less to their Babylonian names. A personal name compounded with the name of a deity indicates that its bearer was under the special protection of the same deity and its servant. The bearer of the name *Nānā-iddin* 'Nānā has given' was, as it were, the property of this goddess, to whom he owed his existence. Nānā-Ishtar, the goddess of fertility and vegetation, was no doubt identified with Demeter, the Greek goddess of fertility and vegetation. We indeed find that the bearer of the name *Nānā-iddin* assumed a Greek name *Di-me-ti-ri-ia* (Demetrius) 'belonging to Demeter'. It is hardly a coincidence that a certain *Anu-uballit*, the bearer of a name compounded with Anu, assumed a Greek name *Di-i-pa-tu-su* compounded with Dios. It seems to indicate that Anu was identified with Zeus. The title *rēshu* 'the chief' *par excellence* may have become an equivalent of Anu, the chief of the gods. The temple *Bit-rēsh* may mean, as suggested, 'the temple of the chief'. There indeed occurs the name *Ardi-rēsh* 'servant of the chief', as variant of *Ardi-Bit-rēsh*. Hence, the bearer of the name *Anu-balāt-su-iḫbi* 'Anu has commanded that he should live', may have assumed the Greek name *Ki-īp-lu-u* (Kephalaïos) 'belonging to the chief'. The name *Di'-du-ur-e-su* (Diodoros) may be a translation of *Ḳishti-Anu* or *Nidinti-Anu* 'gift of Anu', *Di'-pa-ni'* (Diophanes), of *Nūr-Anu* 'light of Anu', *Di'-ki-te-e-su* (Diokēdēs), of *Kidin-Anu* 'charge of Anu', &c. These

suggestions, however, do not involve the question, whether the Babylonians were imbued with Greek culture. We must bear in mind that all the persons in these texts were connected with the temples. The fact that many of them had the right to enjoy portions of the Temple income seems to indicate that they belonged to priestly families. Therefore, some of them may have been well acquainted with Greek lore.

Le Prisme d'Assarhaddon, Roi d'Assyrie, 681-668. Par V. SCHEIL, Membre de l'Institut, Directeur d'Études à l'École Pratique des Hautes Études. Paris : ÉDOUARD CHAMPION, 1914. pp. 56 and 7 plates of photographed texts.

The great French scholar, Father Scheil, to whom Assyriology is so much indebted for his numerous publications of cuneiform texts and valuable contributions, again publishes in this booklet several new inscriptions which historically and philologically are of high interest. No. 1 contains an historical inscription of the king Esarhaddon, of whose reign many details have been hitherto unknown. The text of this inscription which is given in photographed reproductions (plates 1-5), is transliterated, translated, and commented upon. In the first column, Esarhaddon tells us that he was co-regent of his father and, on the advice of Shamash and Adad, proclaimed heir to the throne. His father assembled the royal house and they took the oath of allegiance to him, but an evil spirit came upon them, and they revolted. In the second column, he informs us of the defeat of his rival, and of his care for the gods who assisted him in overcoming his foes. The third column deals with his campaign against Sidon and its confederates. Several towns in the environments of Sidon are mentioned here for the first time. In the fourth column we are told about the subjugation of the Arabs. Of special interest for the history of religion are the names of Arabian deities : *ilu Da-a-a*, *ilu Nu-ha-a-a*, *ilu E-bi-ir-il-lu*, *ilu A-tar-ku-ru-ma-a-a*. The last two columns recapitulate various campaigns, tell about the king's relations with Elam and Gutium, and finish with the usual information

about the restoration of the palace ; the inscription is in some parts fragmentary.

There is another inscription which involves a problem of historical importance. It reads : 'I am *Ashur-e-til-ilani-mukin-apli*, king of the *kishshati*, king of Assyria, son of Sennacherib, king of the *kishshati*, king of Assyria, son of Sargon, king of the *kishshati*, king of Assyria.' It tells about restorations of temples of Assyria and Babylonia. Seeing that the successor of Sennacherib was Esarhaddon, the question arises : Who was this *Ashur-e-til-ilani-mukin-apli* who claimed to be son and successor of Sennacherib ? The author is inclined to identify him with Esarhaddon. Hugo Winckler (*Altorient. Forsch.*, II, pp. 53-9 ; 183-6) has already identified *Ashur-e-til-iluni-ukin(-in)-ni* (III R, 16, 2. 9) and *Ashur-e-til-mukin-apli* (*ibid.*, 16, 8) with the latter. But it is hard to believe in this identification. We would have to assume with Winckler that the original name of this king was *Ashur-ah-iddina*, who according to the will of his father was to be named when he became king *Ashur-etil-mukin-apli*, that, as a matter of fact, on his accession he assumed the name *Ashur-etil-ilani-mukin-apli* ; in official documents, however, he was called *Ashur-etil-ilani-ukin-ni*, and as soon as he was firmly established on his throne he assumed his original name *Ashur-ah-iddina*. Winckler's contention that Esarhaddon as *Ashur-e-til-ilani-ukin-ni* did not bear the title 'king of the *kishshati*', as this title was a special designation of the rulers of Harran which at that time was in possession of his brother, the rival king, would be disproved by our inscription, in which he is named 'king of the *kishshati*'. Its contents show also that it was not written at the time of this king's accession, as it enumerates restorations of temples in Assyria and Babylonia. May we assume that *Ashur-e-til-ilani-mukin-apli* was the name of a brother of Esarhaddon who maintained himself as rival king for a considerable time ?

Another interesting inscription is a prism of Sin-shar-ish-kun, the last king of Assyria, of whom hitherto very little was known. It deals with the building of a temple for Nabū and his consort

Tashmētu. The text is given in autography with transliteration and translation.

Urkunden des altbabylonischen Zivil- und Prozessrechts. Bearbeitet von M. SCHORR. (*Vorderasiatische Bibliothek.*) Leipzig: J. C. HINRICHS'SCHE BUCHHANDLUNG, 1913. pp. 618.

The substantial contents of the present work correspond to its voluminous appearance. The author has made a special study of old Babylonian legal documents and published valuable contributions to this branch of literature, and, therefore, may be looked upon as authority on this subject. The present volume deals with a selection from the old Babylonian legal documents of the period of the Hammurabi dynasty, consisting of various categories. Each category is treated separately, and has a general introduction in which the whole material is surveyed. The transliterations and translations of the documents are frequently accompanied by brief notes which deal with linguistic and antiquarian matters. Each document is headed by a note containing information about its provenance, first editor and its contents. The documents are divided into three main sections: family laws, such as marriage and divorce, laws of obligations, such as loans, and lawsuits. Each main section is again divided into subdivisions. The conclusions drawn from the various documents are given and thoroughly discussed in the subdivisions.

It is quite natural that the norms laid down in the Code of Hammurabi should form the key to the interpretation of these documents. The vast number of Babylonian contracts would be incomprehensible, if there had not been already in the most remote period a general law, that the validity of every transaction rests upon a written document attested by witnesses. But it is due to the character of a legal code that it does not regulate all practical questions of legal procedure and commercial intercourse. These regulations can be gleaned only from the legal documents. The relation of the latter to the Babylonian Code is somewhat similar to that of the Talmud to the biblical laws.

A comparison between the Code and the documents also shows a contrast between theory and practice. We see that the codification of the laws by Hammurabi was influenced by the older legal procedure, and that, owing to social changes, the laws have undergone modifications in a later period. These problems are discussed in the introductions to the divisions. Each of them is headed by a reference to a section of the Code the regulations of which are put into practice in the transactions.

Of immense value is the general introduction to this work. It describes at length, under several headings, the literature of old Babylonian jurisprudence, the various names by which the documents are designated in the cuneiform inscriptions, their form and depositories, script and language, their schematic character, the oath formulae in the documents, the witnesses, the seals and the dates. A useful addition to this work are the Babylonian and Sumerian glossaries and all the dates of the Hammurabi period. It is a work of high merit in every respect and will prove exceedingly useful to students who are interested in the Babylonian legal literature.

Das Priester- und Beamtentum der altbabylonischen Kontrakte.

Mit einer Zusammenstellung sämtlicher Kontrakte der I. Dynastie von Babylon in Regestenform. Ein Beitrag zur altbabylonischen Kulturgeschichte von Dr. phil. et theol. ERNEST LINDL, ao. Professor an der Universität München. (*Studien zur Geschichte und Kultur des Altertums. Zweiter Ergänzungsband.*) Paderborn: FERDINAND SCHÖNINGH, 1913. pp. 514.

If the main contents of this work had not been an afterthought, the author would have reversed its titles and called it: A Classification of all legal documents of the time of the First Babylonian dynasty with a special reference to the priesthood and officialdom. It is exactly what this book does. The classification takes up about four hundred pages, while that of the priesthood and officialdom is dealt with on about eighty pages. The latter are

of course of no small importance for Babylonian history and religion. Seeing, however, that these names have already been mentioned in the former classification, an index might have served the same purpose.

This work is on the whole and in details a valuable contribution to Assyriological studies. It puts the entire material of the Old Babylonian contracts of the Hammurabi period, extant at present, at the student's disposal. It will be a useful help to those who are not thoroughly acquainted with the various kinds of Old Babylonian cursive writing.

It briefly presents the contents of each document, the names of the contracting parties and of the witnesses, the deities in the oath formulae, the place of the transaction and the dates. The arrangement was intended to be chronological. But after a small part had been printed, new publications made their appearance, and the author deemed it advisable for the sake of completeness to make addenda. The same happened several times. By this interruption of the chronological order, for which the author is not responsible, the survey of the material is somewhat laborious. In undated documents, the author always refers to other documents which are dated, where the identical names occur, and we thus learn to what period the former belong. Especially useful are the many transliterations and translations of technical legal terms.

Interesting is the historical Appendix (chapter VI), in which the author investigates the thirty years Isin era of Rim-Sin or Eri-Aku, the contemporary of Hammurabi. Among others, the author contends that Warad-Sin and Rim-sin are identical, and not brothers, as generally believed. As king of the Sumerian city Larsa, his name was written ideographically Warad-Sin, while after the conquest of the Semitic city Isin, his name was written syllabically Ri-im-Sin or Ri-im-Aku.

Zur Götterlehre in den altbabylonischen Königsinschriften. Mit einem ausführlichen Register der auf die Götterlehre bezüglichen Stellen. Von Dr. P. THARSICIUS PAFFRATH, O.F.M.,

Lector der Theologie. (*Studien zur Geschichte und Kultur des Altertums*. Sechster Band, 5. und 6. Heft.) Paderborn : FERDINAND SCHÖNINGH, 1913. pp. 226 and 8 illustrations.

A work of this kind has been a desideratum for a long time. It may be designated as a prolegomena to a history of the Babylonian religion, though not in the full sense of the term, as the material upon which this investigation rests is not complete. The post-Hammurabi literature ought to have been consulted as well. New discoveries of earlier Babylonian documents may of course lead to different conclusions. But in the present state of the science, it tells us everything we want to know about the position, attributes, and mutual relations of the various deities from the earliest Babylonian times down to the Hammurabi dynasty. It thus presents a vivid picture of the development and formation of the Babylonian pantheon.

Of special interest is the chapter which investigates the positions of Anu and Enlil in ancient Babylonia. The former, the highest god of the Babylonians, does not occur in historical inscriptions of Lagash previous to the time of Urukagina. From this fact, the author concludes that the introduction of Anu's cult was due to a political change, the conquest of Lagash by Lugalzaggisi who was king of Erech, the centre of Anu's cult, in South Babylonia. If the author is right, we have also here, as in the case of Marduk, an example how religious conceptions are influenced by political changes. The fact, that the elevation of Anu remained, theoretically at least, permanent in Lagash and throughout Babylonia, would indicate that the rule of Erech lasted for a considerable period. According to these conclusions, Radau (*Sumerian Hymns and Prayers to God Ninib*, Introduction) is evidently wrong in regarding the age of Anu as prehistoric.

Of interest is also the author's conclusion, that in ancient Babylonia the prevailing tendency was multiplication and not reduction of the deities. Then, the question whether there were monotheistic tendencies in the Babylonian religion, will have to be answered in the negative. However, we must remember that the tendency to the multiplication of gods was the result of political conditions. Ancient Babylonia consisted of many

independent localities. Each of them was anxious to be on good terms with all the personified powers of nature. Therefore, each town erected temples and shrines to these deities and worshipped them under different names. As soon as the country was united, it was natural that the process of multiplication should give way to that of reduction. In a united Babylonia, each phenomenon of nature ought to have been represented by a single deity. Hence, triplets or duplicates logically had not the least right of existence. Theoretically there may have been, in a later age, a tendency to the reduction of gods; practically, however, it was checked by the priests of the superfluous deities.

Les Lettres de Hammurabi à Sin-idinnam. Transcription, Traduction et Commentaire. Par F. CHARLES JEAN, Professeur de Sciences Bibliques. Précédées d'une Étude sur deux caractères du style Assyro-Babylonien. Paris: VICTOR LECOFFRE, 1913. pp. 280.

The letters of Hammurabi are historically of peculiar interest, as they present the great Babylonian legislator as administrator of his empire, and show the justification of his claim as being 'king of righteousness'. He personally supervised and controlled all departments of his government. They also demonstrate the effective supervision which he exercised over the decisions of the courts in districts which were situated at some distance from the capital. From these letters which are addressed to a high official who was in all probability governor of Larsa, in South Babylonia, we may infer that Hammurabi stood in correspondence with all the governors of his empire, and was interested in the minutest affairs of all his subjects.

The present volume contains fifty-five letters of Hammurabi in transliteration and translation arranged according to the subjects. These letters had already been published in 1898-1900 by L. W. King, with transliterations and translations, in his book *The Letters and Inscriptions of Hammurabi*, London. Seeing that King's book had been published before the Code of Hammurabi was discovered and before a great many documents of the Hammurabi period were edited, one naturally expects to

find in a recent publication of the same subject some improvements on the previous edition, since the author declares: 'Notre traduction est faite directement sur le texte cunéiforme' (p. 75). In comparing letter by letter the text with both transliterations and translations, the present writer was rather disappointed in this respect. He found that both are identical to the minutest details. The author, however, is not to blame for having accepted King's rendering of the contents after having convinced himself of its exactness by a comparison with the original. But we are surprised to find that the author everywhere accepted King's reading of proper names, which is in many points incorrect. One who deals with documents of the Hammurabi period ought to make a thorough study of proper names, and especially consult Ranke's work *Early Babylonian Personal Names*. The author reads with King: *Ana-mi-ni-shu-e-mid*, *Mi-ni-Shamash*, *Mi-ni-Sin*, *Mi-ni-Mar-tu*, without knowing that *mi-ni* in these names is to be read *šilli(-li)*; *Ilu-ka-Sin*, *Ilu-ka-Shamash*, *E-nu-ka-Ishtar*, instead of *Ilu-bi-Sin*, *Ilu-bi-Shamash*, *E-til-bi-Ishtar*, without being aware of the fact that KA in these names is an ideogram for *pū* 'mouth' and frequently changes with *bi* *Shum-ma-an-la-ilu*, instead of *Shum-ma-ilu-la-ilu*, *A-ni-ellati* for *A-li-ellati*, *Ma-sha-tum* for *Ma-ta-tum*, which is of course identical with Hebrew מַתָּה 'gift'. He even reads with King *A-bu-um-wa-ga*..., without knowing that the name *A-bu-um-wa-ka-r* often occurs in the Hammurabi period. That the author mistook Babylonian LI for the Roman numerals 51 (p. 130, 10) may be due to absent-mindedness. The misprints in the registration numbers make a comparison of the letters with the cuneiform text somewhat laborious.

However, in spite of these inaccuracies, the book is not without merits. From numerous foot-notes containing well-known facts, we may infer that the book was written for non-Assyriologists, evidently for students of theology, who are interested only in the contents, not in the proper names. It contains also a useful description of the style of the cuneiform literature of both Babylonians and Assyrians.

Le Code de Hamourabi, et ses Origines. Aperçu sommaire du Droit chaldéen par DOMINIQUE MIRANDE, Président de Chambre Honoraire à la Cour d'Appel de Paris. Paris: ERNEST LEROUX, 1913. pp. 84.

The present work consists of four discourses delivered with French esprit and vivacity. The first discourse, entitled 'The Prehistoric Chaldaea', discussed various theories concerning the geological periods, the origin of human race and other philosophical topics. The second contains reflections on the early history of Shumer and Akkad. The third is called 'A visit to the Museum of the Louvre', which gives a description of the Code of Hammurabi, of its being discovered at Susa, and how it was carried to this city in the twelfth century B.C. by the king of Elam, Shutruk-naḥunte, illustrating it by examples from the ancient and modern history. The fourth discusses the Babylonian legal principles which are illustrated by extracts from the Code and other legal documents.

The work is written for the general reader, though for this purpose it contains too much erudition. The venerable author is a former President of the Paris Court of Appeals, and has devoted, as he informs us, half a century to the study and application of French jurisprudence. The marvellous discoveries of recent years suggested to him this work, for the principal elements of which he is indebted to the lectures of the French scholars Flach and Fossey. Thus being an amateur, he is not to blame for some inaccuracies and obsolete views found in his work. He places Sargon of Akkad about twelve hundred or one thousand years after Manishtusu (pp. 2, 26, 34), while the latter actually was the successor of the former. Sin-idinam, the governor under Hammurabi, is identified by the author with the king of Larsa of the same name. This identification was suggested eighteen years ago by Father Scheil (*Revue Biblique*, vol. V, p. 600 f.), but is now generally recognized as nigh impossible. The biblical name Amraphel is still explained as a Babylonian translation Ammu-rapaltu of the West Semitic

name Hammurabi, an interpretation discarded long ago. His transliteration of Sumerian words is peculiar, as, for example, who would recognize in *Kadanjuraki* the Sumerian name *Ka-dingir-ra-ki* of Babylon, or in *Sin-turki* the other Sumerian name *Tin-tir-ki* of this city?

Le Palais de Darius I^{er}. Simple notice par M. L. PILLET, Architecte diplômé par le Gouvernement. Paris: PAUL GEUTHNER, 1914. pp. 106, illustrations 32 and a map.

One might be inclined to think that a book which describes the ruins of King Darius's palace should be of interest only to an architect, and has no connexion with Semitic studies. Yet there is a reason why a Semitist should also be interested in the architecture of this king's palace. The Book of Esther contains a description of some parts of the palace of the king Ahasuerus. This palace was utterly destroyed by Alexander the Great. If the author of this book did not live in the Persian period, as the modern critics generally contend, he could not have been acquainted with the structure of this palace. Thus the question whether this book is historical largely depends upon a comparison of its description with the excavated ruins of this palace. Students who are not acquainted with the work of M. Dieulafoy, *L'Acropole de Suse*, Paris, 1890, will find in this work some useful information on the subject. However, the book is especially written for visitors to the Parisian Museums, as the author declares, to give them some information about the history of Susa, and not for students. The author also reviews the history of the excavations at Susa. The book is pleasant reading and instructive. Interesting are its beautiful illustrations, especially Nos. 22, 23, 26, in which the palace is presented in its former splendour.

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